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Vol. II

TRANSCRIPT OF RECORD

(Pages 395 to 767)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE, ET AL., ETC., PETITIONERS,

vs.

FRANK L. ARAGON AND OTHER APPLICANTS, MEMBERS OF ALASKA CANNERY WORKERS UNION LOCAL No. 5, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 10, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

No. 10425

United States

Circuit Court of Appeals

For the Ninth Circuit.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting Said Commission, and ALASKA PACKERS ASSOCIATION, a Corporation, ALASK SALMON COMPANY, a Corporation, and RED SALMON CANNING COMPANY, a Corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 395 to 767

Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

Rotary Colorprint, 590 Folsom St., San Francisco

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT BB

Our counter proposals.

1. American Communications Assn.—by letter to Hansen.

2. Carpenters—1939 contract.

3. Firemen—proposal attached

4. Engineers—Steam & diesel and gas operators proposal attached

5. Cooks proposal attached

6. Sailors—will have to get copy—in general, 1939 contract with percentage in lieu of overtime

7. Machinists—offered basic 1940 Seattle contract—will have to get copy.

8. Fishermen—covered by letter of April 19.

9. Masters, Mates & Pilots—1939 contract with percentage in lieu of overtime—will get copy.

(Copy)

April 29, 1940

American Communications Association
Hansford Building
268 Market Street
San Francisco, California
Attention Mr. Hanson

Gentlemen:

In accordance with our letter of April 26, 1940, we we submit to you the following proposal for anticipated operations of Alaska Packers Association and Red Salmon Canning Company in Bristol Bay for the 1940 season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

As our proposal we submit to you the 1939 contract between the American Communications Association and the Seattle Salmon Canners, a copy of which is enclosed herewith, together with the following modifications:

1. Additional conditions covering Radio Operator Tallymen shall be:

a. Radio Operator-Tallymen shall receive the sum of $163.00 per month.

b. Radio Operator-Tallymen shall work any 8 hours out of 24, between midnight and midnight, without payment of overtime.

c. Radio Operator-Tallymen may be required to perform tally work not to exceed 4 hours during any day. Any tally work in excess of 4 hours during any day shall be paid for at the regular overtime rate.

d. After arrival in Alaska and prior to the fishing season Radio Operator-Tallymen may be required to perform duties involved in installation of electrical and radio equipment and such additional Tallymen duties as were performed during the 1939 season by Radio Operator-Tallymen, provided that such work shall not exceed 8 hours between the hours of 8 a.m. and 6 p.m. during any day, and still further provided that such work does not infringe upon the jurisdiction of any other union whose members are employed in Alaska.

2. Radio Officers shall receive and copy radio press or news dispatches during the regular straight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

time working period without payment of overtime, and shall make such copies thereof during regular straight time working period as may be required, without payment of overtime.

3. The union shall agree to furnish competent men within the employments covered by the contract.

4. There shall be no obligation on the Company's part to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

5. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

6. The contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party in writing of termination of the contract ar requests re-negotiation.

As we have previously advised you, it will be necessary for us to have reached agreements with all unions involved not later than Friday, May 3,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

1940, if any expeditions are to be undertaken to Bristol Bay this season by the canners.

Yours very truly,

ALASKA SALMON INDUSTRY, INC.

By EDWARD H. MOORE

EHM: CH

Pacific Coast Marine Firemen, Oilers, Watertenders and Wiper Association

Agreement

This agreement entered into this ------ day of May, 1940, between Alaska Salmon Industry, Inc. (representing Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association (herein referred to as the Union),

Witnesseth:

Wages

Section 1. On vessels operated in coastal voyages to Alaska and return without any regular members of the crew being assigned to work ashore in the canneries, or without the vessel engaging in fishery operations:

Foremen	$105.00 per month
Oilers	105.00 " "
Watertenders	105.00 " "
Utilitymen	105.00 " "

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. On vessels engaged in cannery voyages, when part of engineroom crews are assigned to work ashore in the canneries, or vessels engage in fishery operations:

Firemen	$145.00 per month
Oilers	145.00 " "
Watertenders	145.00 " "
Unlicensed Junior (Etolin)	145.00 " "
Utilitymen	145.00 " "

These wages shall apply from date of joining in San Francisco until arrival back in the same port.

Section 3. When men are hired for standby, they shall be paid at the flat rate of Six Dollars and Fifty Cents ($6.50) daily. For work during the standby period on Saturday afternoons, Sundays and holidays, and in excess of eight hours, they shall be paid at time and one-half of the overtime rate.

Section 4. The wages of monthly men kept by on the Company's vessels until the 1941 season shall be at the rate of $140.00 monthly.

Section 5. Men assigned as pumpmen at Nushagak shall have the sum of Twenty-five Dollars ($25.00) added to their compensation for the season, for preparing their own meals. Relief pumpmen at Nushagak shall receive Ten Dollars ($10.00) in addition to their regular wage.

Section 6. Men assigned to coal burning tugs at canneries shall be paid Twenty Dollars ($20.00) per month in addition to their regular wages during the period of such assignment.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Overtime and Overtime Rates

Section 7. The overtime rate shall be One Dollar ($1.00) per hour. It shall be paid in unbroken hours for work performed as follows:

(a) For all work in excess of eight hours daily.

(b) For all work performed on Saturday afternoons, Sundays and holidays while vessel is in port, or men are ashore in the canneries.

In port shall mean while the ship is alongside the dock or anchored in the roadstead.

Overtime starts with FWE Boll on arrival, ends with All Clear on departure.

(c) For excessively dirty work, and for work in tanks, cleaning tank tops and bilges.

(d) When directly engaged in loading or discharging bulk oil for other parties from which revenue is derived by the vessel on which they are employed.

(e) When transferred to shore in barges or tugs or back to the ship when the hours of labor and traveling time exceed eight on any one day reckoned from midnight to midnight, or when such traveling time occurs on Saturday afternoons, Sundays or holidays.

(f) For firemen at the canneries relieving for meals; the fireman making such meal relief for the 8 to 4 to 12 watches shall be credited with one-half hour's overtime.

(g) As provided for violations of sections as mentioned hereinafter.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(h) As provided in the working rules.

Section 8. Holidays observed under this Agreement shall be: New Year's Day, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day. In port, all holidays observed by the International Longshoremen and Warehousemen's Union.

Section 9. During weekends in ports, when firemen are standing eight-hour watches, the twelve hours overtime on Saturday afternoon shall be divided equally between the three watches.

Section 19. When men are called on to work cargo (Longshore work) the rate of One Dollar and Ten Cents ($1.10) hourly shall be paid. When working penalty cargo, the penalty rate shall also apply.

Section 11. The engineroom delegate shall check his overtime records daily with the Chief Engineer, for engineroom work; and the Chief Mate for cargo work; and superintendent or authorized agent for cannery overtime.

General Rules and Living Conditions

Section 12. Members shall be supplied with clean white linen once each week, clean spread, bath and face towels, distinfectant soap and laundry soap and matches. They shall have sufficient clean blankets. Linen shall be changed every Monday. Delegates shall notify steward, captain or superintendent,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in writing of any breach of this clause, retaining duplicate copy for reference; and, when thereafter they are not supplied with clean linen change, men shall be entitled to penalty money at the rate of one hour's overtime for each day during which such change was not accomplished. Men shall be responsible for linen and blankets furnished.

Section 13. The Company shall not discriminate against any men because of Union activities. Men shall not be required to go through picket lines established by organized labor, or will they be required to work if the vessel, or the deck at which the vessel is lying, is picketed by organized labor. Any disputes unable to be settled shall be referred back to the membership at Headquarters through the usual procedure established for settling disputes.

Section 14. (a) In the event of shipwreck or disaster necessitating abandonment of the vessel, members shall be paid all moneys due them; first-class transportation, maintenance and wages back to San Francisco; provided, however, shipwrecked men may be transferred to another of the Company's vessels. When the men's personal belongings are lost in such disaster or shipwreck, the sum of One Hundred Dollars ($100.00) shall be paid in addition to cover such loss.

(b) Any member laid up through sickness or accident, who is unable to work according to the judgment of a physician, shall be paid all earnings up to the date so laid up, and thereafter be paid his

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

(c) Members may be discharged in Alaska for refusal to perform work under the terms of this Agreement, or for other just cause, and wages shall cease at date of such discharge. Men discharged shall be given free transportation and subsistence on Company's vessels to San Francisco.

Section 15. All members while engaged under this Agreement shall receive medical and surgical attendance; and medical and surgical necessities on the vessel. Sea stores, cigarettes, tobacco and other slop chest supplies shall be stocked and sold on the basis of cost plus 10%.

Section 16. Members shall have separate quarters, washroom with fresh water shower, and toilet. These quarters shall not be shared with, or used by any others than the ship's unlicensed engineroom personnel. Quarters and washrooms shall be adequately heated. Rooms shall have mirrors, lockers and benches; bunk lights shall be supplied where possible. No bunk shall be more than two high. In the mess-room, all dishes shall be crockery ware. Unlicensed engineroom personnel shall have separate table in messroom on each vessel, and night lunch furnished for their exclusive use.

Section 17. There shall be at all times sufficient first-grade foods for the requirements of the crew, to include first-grade meats, fresh fish, and fresh

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

fruits and vegetables where possible. All ship's personnel shall be fed alike.

Section 18. Meal hours and Relief for Evening Meal: Meals shall be served as follows: Breakfast from 7:30 to 8:30 A.M.; Dinner from 11:30 to 12:30 P.M.; Supper from 5 P.M. to 6 P.M.

While on sea watches, the twelve to four and eight to twelve watches shall relieve the four to eight watch at 5 P.M. for supper on alternate days. No overtime shall be required paid for such relief.

Fifteen minutes between the hours of 10 and 10:30 A.M. and between 3 and 3:30 P.M. shall be allowed for coffee. This privilege is not to be abused.

If necessary, members shall prepare their own coffee without expense to the Company. The Company shall supply the necessary percolators, coffee, etc.

Section 19. When men are on the monthly scale, and, for any reason, such as fumigation or temporary shutdown, have to eat or sleep ashore, they shall be allowed Seventy-five Cents (75c) each for breakfast and dinner, One Dollar ($1.00) for supper, and Two Dollars ($2.00) for room rent.

Section 20. Engineroom crews shall not be laid off when arriving back in home ports and scheduled to return to Alaska within ten days but shall continue in the employ of the Company all through the season.

Section 21. Making any payment where liability exists, does not release the Company from liability.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 22. It is expressly agreed that no engineer, agent or official of the Company, or any Union delegate or member, has the power or the authority, to change the provisions of this Agreement in Alaska. Disputes shall be settled in San Francisco directly between the Union and the Company.

Section 23. If voyage is abandoned, due to delays caused by labor conditions, these prospective employees included in this Agreement will be paid only for the actual number of days worked at their respective wages.

Section 24. When ship is in port or roadstead, and ship's plant shut down and heat and electricity is not furnished, members of crew shall be allowed One Dollar ($1.00) per night for lodging.

Working Rules

Section 25. Setting and Breaking Sea Watches:

(a) Sea Watches shall be set not later than twelve noon on the day of departure.

(b) In port the Chief Engineer shall decide when and if necessary to break Sea Watches, which, however, must be broken at twelve noon or twelve midnight.

(c) When Sea Watches are set and the ship fails to sail within twelve hours from the time watches are set, all time in excess of the twelve hour limit shall be paid at the overtime rate. This shall not apply in the event the delay is caused by a labor dispute, however.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) When Sea Watches are broken, and donkey watch is maintained, the donkey watch shall consist of the following: if cargo is being worked, one watertender or one oiler, and one fireman. When cargo is not being worked, only one fireman shall be required on watch, (with the exception of the Etolin).

Section 26. (a) When cargo is being worked an oiler shall be assigned to oil winches. He shall work any eight (8) hours in twenty-four (24) hours without payment of overtime.

Section 27. The following clarifications shall determine the duties of the respective engineroom personnel on the ships:

Firemen—Standing Sea Watches: Where there are no watertenders, he shall keep steam, watch oil-pressure and temperatures, clean strainers and burners. He shall not oil any auxiliaries outside the fireroom; tend water, or do any work not directly connected with the steaming of boilers. Firemen may be assigned stations not below floorplates, or higher than ten feet from the floorplates. All cleaning work shall be confined between the hours of 8 A.M. and 5 P.M. on week days, and 8 A.M. to noon Saturdays. Any cleaning outside these hours shall be overtime. On all watches, however, he shall clean up excess oil occasioned by changing burners.

Firemen shall not blow tubes, except on an overtime basis, but may be required to assist by helping to close smokebox doors, and turning steam on and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

off, automatic blowing of tubes not to be included as overtime.

(b) Firemen—on Donkey Watches: Shall keep steam. Shall do no cleaning or boiler work; however, he shall clean up excess oil occasioned by changing burners. After 5 P.M. and before 8 A.M., when no cargo is being worked, they may be required to look after auxiliaries in engine room.

At all times steam shall be got up by members of the MFOW&W only, and no licensed engineer shall be asked or ordered to tend fires on any ship's boilers. This provision shall also apply to vessels in home ports.

(c) Oilers: Shall oil main engine and auxiliaries; tend water when gauges are in engine room and no watertender is carried. He shall pump bilges, oil ice machine and stearing gear; shall do no cleaning while on sea watches, except to mop up floor plates in front of main engine before going off watch. He shall work any eight (8) hours in twenty-four (24) hours.

(d) Watertenders: Shall tend water; watch oil pressure and condition of fires; keep check on fuel service tanks; watch blowers, stack draft and oil temperatures. When sea watches are broken, they shall do mechanical repairs in fire room, and on boiler mountings and feed pumps, between the hours of 8 A.M. and 5 P.M. When steam is in on more than two boilers, a watertender shall be on watch

(Testimony of Paul St. Sure.)

Respondent's Exhibit RB—(Continued)

with the fireman and receive the same overtime consideration when cargo is being worked.

(e) Utility Men: Shall do general cleaning, painting and polishing in engine department. They shall take on stores; hook up water and fuel oil hoses; work from 8 A.M. to noon, 1 P.M. to 5 P.M. week days; and 8 A.M. to noon Saturday. They shall be required to blow tubes by hand. When the job is finished, they shall knock off for the day to clean clothes. They shall do inside boiler work on minor jobs not warranting the hiring of gangs of scalers providing overtime is paid. On no account shall they be required to clean out the quarters of Orientals.

They may be assigned ashore as firemen or oilers, or helpers to machinists, electricians, pipefitters, tinsmiths and bricklayer. They may also be assigned to clean winter layup oil off machinery.

(f) Combination men (Kanak) shall combine the duties of firemen and oilers. They shall not do any wiping or station work, but shall be required to leave safe working conditions for their relief.

(g) Chilkat and Madrono: Oiler in Alaska will work eight hours between 8 A.M. and 5 P.M. with one hour for noon meal, or two four-hour watches with eight hours off duty, dependent on tides. Work on Saturday afternoons, Sundays and Holidays while engaged in cannery operations comes within definition of "In Port".

Kanak and Kvichak:—Combination men and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

oilers in Alaska may be required to work watches of 4 and 8 off, or 8 on and 16 off, by arrangement between the delegates and the chief engineer.

In either case, work on Saturday afternoons, Sundays and Holidays while in Bristol Bay, comes within definition of "In Port".

Sannak and Fram. There shall be one fireman on the "Sannak" and "Fram." In lieu of all overtime from time of leaving until returning to San Francisco, they shall each receive One Dollar and Twenty-five Cents ($1.25) per thousands cases packed on the "Sannak", and $2.50 per thousand cases on the "Fram."

(h) Unlicensed Junior—Etolin:—Hours: 8 A.M. to noon, 1 P.M. to 5 P.M. weekdays; 8 A.M. to noon Saturdays.

Shall perform maintenance work in engine department, and assist the engineers in repair work in engine department. He shall not be required to do any cleaning of boilers, cleaning paint, polishing, wire brushing, shipping or scaling.

Section 28. (a) Where ships crews are sent ashore to fire boilers, they shall be kept on the job until the ship sails or the boilers are blown down. This clause shall not be deemed to apply if man is incompetent or drunk, in which case another member of the crew shall be assigned in his place.

(b) Men assigned as firemen in canneries shall work in three watches of eight hours each, and do only firemans duty.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(c) Other men going ashore may be assigned to jobs attending any machinery driven by steam or oil. They shall assist in maintenance, overhauling and repair work and act as helpers. However, under no conditions shall they be required to work in fish tanks or hoppers, or gut or clean fish, or clean fish tanks or conveyors, or any excessively dirty work. The outside painting of fuel tanks or machinery shall be regarded as within their regular duty.

Men assigned as cannery watchmen shall be assigned as watchmen every night on a straight eight-hour watch between the hours of 6 P.M. and 6 A.M.

(d) If the men do not stand watches they may be worked any eight hours out of nine consecutive hours from Midnight till Midnight. But they must have 16 hours rest between eight hours worked or overtime be paid.

(e) If men are put to work outside in bad wet weather they should be furnished with Boots and Oil Skins.

Section 29. (a) The standby men shall be required to do regular standby work as covered by the jurisdiction of the Firemen's Union, as follows: Cleaning, chipping and painting of quarters; cleaning, chipping and painting in engine room and fire room; cleaning of condensers and hot wells; assisting engineers in maintenance work; work on boilers shall be limited to washing out waterside, assisting to overhaul valves, cleaning tube plates for water

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tube boilers, replacing gaskets and assisting on brick work.

(b) Standby men shall be governed by the standard prevailing practice in past years, and ship on the vessel to which they are assigned by the port engineer.

(c) During such period, clauses dealing with room and meal allowances shall not apply.

(d) During such periods, any man using spray guns or chipping with air hammers shall be paid One Dollar per day extra.

Cannery Firemen for Larsen's Bay and Chignik

Section 30. (a) On the first voyage of the Chirikoff there shall be hired four cannery firemen for Larsen's Bay and three cannery firemen for Chignik.

(b) Cannery firemen shall be divided into three watches of eight hours each in Alaska. The fourth fireman for Larsen's Bay, previous to operating season, shall assist in overhauling work on by-products plant or main cannery.

(c) When assigned to by-products plant during the canning season, he shall stand an eight-hour watch between the hours of 8 A.M. and 5 P.M.

(d) Fireman for by-products plant shall be required to bring up steam on his own boiler, and shut down when day's work is finished.

(e) If emergency requires, these men shall be required to work in the engine room department of the vessel on the voyage to Alaska.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 31. The wage and working conditions of the Agreement shall not apply to the bricklayer-utilityman and his helper, whose wages shall be as follows:

Bricklayer-Utilityman	$165.00 Per Month
Helper	145.00 Per Month

Section 32.

Overtime Rate	$1.10 Per Hour
Overtime Rate for Helper	1.00 Per Hour

Section 33. Hours:—Eight between 8 A.M. and 5 P.M. weekdays, four on Saturdays from 8 A.M. to noon.

Section 34. Duties:—Take care of brickwork, covering pipe, concrete work, etc., at the following canneries: NN and M at Naknek, Ugashik, Egegik, and Koggiung.

Section 35. When bricklayer is employed on standby he shall receive the usual rate of pay while doing brickwork. When not engaged in this work, he may be assigned with the regular MFOW&W standby crew at $140.00 per month.

Section 36. The Company agrees to recognize the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association as the representative for collective bargaining of all unlicensed engineroom personnel on vessels owned, operated or chartered by the Company, in the Alaska Cannery Trade; and firemen, oilers and watertenders employed in the Company's cannery operations in the Bristol Bay Area.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 37. All such personnel shall be members in good standing with the Union, and must be hired directly from the offices of the Union.

Section 38. The Union agrees to furnish experienced, capable and competent men for the jobs called for.

Section 39. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 40. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS' ASSOCIATION

ALASKA SALMON INDUSTRY, INC.

By ----------

For:

ALASKA PACKERS ASSOCIATION

RED SALMON CANNING CO.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Steam and Diesel Agreement

This Agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons ap-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

pointed by the Company. The parties shall submit any such disputes to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine room officer shall be required to work under conditions which are inimical to his personal safety or health. No licensed engine room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

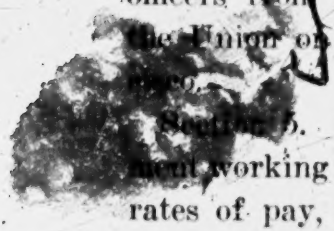
Section 3. Authorized representatives of the Union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine-room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the En-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

gine Room Department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available, provided they are qualified to fill such positions. All licensed engine room officers must be members of the Union in good standing. The Employer shall select his licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.



Section 5. Any engineer covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under this agreement. This shall not apply to any employee relieving any employee for ten (10) days or less.

Section 6. When vessels are in any port and meals are not furnished, $3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, such as beds not made up, heat and lights not furnished, etc., $2.00 per night shall be allowed for such. The second sentence of this section shall not apply when transferred to power scows, tugboats or launch, but clean linen must be furnished weekly. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

Section 7. When in port or at an anchorage, the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

following days shall be recognized as legal holidays; All Sundays, Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day. In the event that any of these holidays fall on a Sunday, the following Monday shall be observed.

Section 8. If service is satisfactory to the employer, the Chief Engineer of the fololwing vessels, the "Etolin", "Bering", "Chirikof", "Delarof", and "American Star", will be employed on a year round basis, at the monthly rate of $250.00 per month; for the M. S. "Kvichak", the same year round employment shall prevail at the monthly rate of $220.00 and for the M. S. Madrono the same year round employment at the monthly rate of $200.00. In the event the Chief Engineer's services prove unsatisfactory, then during his term at sea, full offshore pay of

$310.00 per month for the "Etolin"
300.00 per month for the "Bering"
300.00 per month for the "Chirikof"
300.00 per month for the "Delarof"
300.00 per month for the "American Star"
270.00 per month for the M. S. "Kvichak"

will apply in lieu of the year rate of $250.00 for the steamers above mentioned, $220.00 for the M. S. "Kvichak" and $200.00 for the M. S. Madrono per month. In the event of any vacancy occuring with the Chief Engineers' position, the employer

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

agrees to fill such vacancy as soon as practical by a member of the Union.

Should the Chief Engineer of the "Madrono" be laid-off at any time after the Season he will be paid $200.00 extra to adjust for a higher seasonal basis. It is clearly understood that the Chief Engineer on the "Madrono" is not necessarily an all year-round position.

The above Chief Engineers shall be granted a vacation consisting of two consecutive weeks with full pay.

The work week for Chief Engineers in winter quarters shall consist of five days at eight hours per day.

Section 9. While in winter quarters it shall be optional with the company to employ licensed engineers at either of the following rates:

1. At the prevailing rate paid machinists of $1.12½ per hour.
2. At the monthly rate of $180.00, such rate to be based on a five day week, eight hours per day. (Two weeks vacation shall be granted if annually employed.)
3. When engineers are engaged to assist engineers in repair or maintenance work, they shall be paid at the rate of $35.00 per week. The regular work week shall consist of five days, Monday to Friday inclusive.

Section 10. Within thirty days after signing off of articles, the employer shall supply the Asso-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ciation with a list of names of its members they do not wish to rehire.

However, engineers must report in person or in writing to employer not earlier than two months and not later than one month prior to sailing, stating that they will or will not return.

Wages

Section 11. When ships are in commission, the licensed engine room officers employed by the Alaska Packers' Association on the vessels as herein designated shall be paid not less than the following monthly salaries, with subsistance, quarters, bedding, weekly change of linen, maintenance and cure:

Vessel	Chief Engineer	1st Asst. Engineer	2nd Asst. Engineer	3rd Asst. Engineer	4th Asst. Engineer
SS Etolin	$250.00	$220.00	$200.00	$185.00	$170.00
SS Bering	250.00	220.00	200.00	185.00	
SS Chirikof	250.00	220.00	200.00	185.00	
SS Delarof	250.00	220.00	200.00	185.00	
SS American Star	250.00	220.00	200.00	185.00	
SS Kanak	225.00	180.00	160.00		
MS Kvichak	220.00	205.00	185.00	170.00	
MS Madrono	200.00	195.00	170.00		
MS Chilkat	215.00	180.00	160.00		
MS Alitak	215.00	180.00	160.00		

Section 12. Hours of Labor at Sea. (a) Watch Officers: Four hours shall constitute a watch and two watches shall constitute a day's work.

(b) Non-watch Officers: Eight (8) hours from 8 A.M. to 5 P.M. shall constitute a day's work for non-watch officers at sea, provided, however, that

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

if it develops that a non-watch officer must work outside of these hours, he may do so, providing he shall not work more than eight (8) hours out of twenty-four (24) hours reckoned from midnight to midnight.

(c) All work done at sea by assistant engineers in excess of eight (8) hours a day as defined in this section, except that necessary for the safety of the passengers, crew, vessel or propulsion machinery or their auxiliaries or cargo, shall constitute overtime.

(d) At sea, no work shall be performed on Saturday afternoons, Sundays or Holidays except that necessary for the navigation and safety of the vessel, provided that all licensed engineers shall stand their respective watches as required by law.

Section 13. Hours of Labor in Port. (a) In home ports, when watches are broken, the working day shall consist of eight (8) hours between 8 A.M. and 5 P.M., and all work performed in the home port after 5 P.M. and before 8 A.M. shall constitute overtime.

(b) In all other ports when watches are broken and it is necessary for engineers to stand night watches two engineers shall maintain the watches, which shall be equally divided between 5 P.M. and 8 A.M., without the payment of overtime, for the purpose of supervising and operating the machinery necessary to keep the plant in operation, but any work performed on such night watches other

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

than that necessary for the safety of the passengers, crew, vessel or its equipment or cargo shall constitute overtime. The remaining engineer may be assigned as mutually agreed between the two parties. If assigned to day work on the ship the work day for engineers so assigned shall be eight hours between 8 A.M. and 5 P.M. All work performed by engineers assigned to day work after 5 P.M. and before 8 A.M. shall constitute overtime.

Section 14. The regular rate of overtime for licensed engine room officers shall be $1.25 per hour.

For such work no less than one hour shall be paid. For all work exceeding one hour, straight time shall be paid at the regular overtime rate.

Section 15. When overtime work is performed, the officer performing same shall prepare in duplicate an overtime slip immediately after the work is completed and shall have same certified by the officer ordering the work to be done, and if at the cannery by the Superintendent or cannery Foreman.

The officer shall present Chief Engineer, Superintendent or Cannery Foreman with one of the duplicate copies even if not certified; disputes relating to this section shall be determined as provided for in Section 2.

Section 16. On vessel where the Chief Engineer is required to stand a regular sea watch, the Chief

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Engineer shall be entitled to the same working conditions regarding overtime as an Assistant Engineer.

Section 17. No Chief Engineer shall do work which will prevent Assistant Engineers from receiving overtime pay.

Section 18. When fuel is being transferred for other Companies from which revenue is being derived, watch engineers shall be paid at the regular overtime rate.

Section 19. While at the fishing stations, work hours on tugboats, S. S. "Kanak", M. S. "Chilkat" and M. S. "Alitak", shall consist of eight (8) hours out of twenty-four reckoned from midnight to midnight, Saturdays, and Sundays excluded, but from Friday midnight to Saturday noon, four hours shall constitute one day's work.

Section 20. Work hours of engineers assigned to maintenance in cannery shall be be between the hours of 8 A.M. to 12 noon, and from 1 P.M. to 5 P.M. on week days; work hours on Saturdays shall be from 8 A.M. to 12 noon. Work hours of engineers assigned to maintenance work on launches shall be 8 hours in 24 reckoned from midnight to midnight. Engineers transferred to cannery shall be quartered in rooms not having more than two beds if possible. Engineers shall not share room with any other but an engineer.

Section 21. All work performed by Engineers while working ashore assigned to maintenance in

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

cannery or over launches on Saturday afternoons, Sundays, or holidays shall be paid for at the regular overtime rate. This not to apply to Engineers assigned to launches working on percentage.

Section 22. Chief Engineers shall be employed or discharged by the owners or Superintendent Engineer. Assistant Engineers shall be selected by the Chief Engineer, subject to the approval of the owner or Superintendent Engineer. The Chief Engineers shall only be discharged by the same authorities. When assigned to shore duty, engineer shall carry out the orders of the Superintendent or Company's agent.

Section 23. Wherever Union members were employed in the past operating stationary power plants, such members shall continue to operate same.

Section 24. No unlicensed engine room personnel off watch shall be permitted to open valves in engine room; such duties shall be performed by the Engineer on watch or at his order only, issued to the unlicensed crew on watch.

Working Conditions

Section 25. Sea watches shall be set at midnight preceding sailing day and shall be broken at noon on day of arrival.

Section 26. For the safety of passengers, crew, vessel or her equipment or cargo, an Engineer on watch while vessel is being navigated shall not

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be permitted to do work that takes him away from engine room or fire room.

Section 27. While in Alaska, no less than two engineers must be kept while loading and discharging. If refrigerating plant is used between discharging and loading, two engineers must remain aboard. This does not apply to M. S. Madrono.

Section 28. Under no condition shall a Chief or Assistant Engineer remain alone aboard ship—at least one Fireman or Oiler must remain aboard. This does not apply to M. S. Madrono.

Section 29. Under no condition shall a Chief Engineer or Assistant Engineer do his own cooking aboard ship. A cook must be retained.

Section 30. In the home port after leaving winter quarters two night engineers shall be employed. They shall be paid at the rate of $8.00 per night. No overtime to be paid night engineers when cargo is worked. This does not apply to M. S. "Kvichak" and M. S. "Madrono".

Section 31. Unless a separate officers' mess is provided for their use, all engineers shall be permitted to take their meals in the regular ship's saloon.

Section 32. A chair must be assigned to each engineer in the dining saloon.

Section 33. While ashore, all engineers' meals shall be served in the officers' mess room.

Section 34. Should Chief Engineer be assigned to shore duty while at the fishing stations, As-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

sistant Engineer responsible and in charge shall be paid Chief Engineers' scale during the absence of Chief Engineer.

Section 35. While ship is at anchorage at Winter Quarters, power transportation must be furnished to and from the ship. (Boat must have inboard power and must be of sufficient sturdiness to withstand winter storms in bay.)

Section 36. For the purpose of this agreement, the home port shall be considered the port where the company's offices and terminals are located and articles are signed and terminated.

Section 37. A full complement of licensed engine-room officers shall be employed at all times when vessels enter commission, at the beginning of the season, until ship returns to winter quarters.

The time when ship enters commission shall be defined as such time when stevedores are first used after the vessel has departed from winter quarters, destined for any loading terminal or San Francisco or for direct departure to Alaska.

While the ship is loading or discharging between the Spring and Summer trips, and between the Summer and Fall trips, licensed engineers shall be retained.

If at winter quarters, the winter quarters scale shall prevail.

Section 38. If employer sees fit, engineers who have been in the employment of the company during the past season shall be given preference of

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

employment and promoted when opportunity presents itself. At the employer's option, engineers shall have the privilege of going back on the jobs on which they served last, provided former employee is in good standing in the Union.

Section 39. A member laid up through sickness or accident resulting from his employment, who is unable to work in the judgment of a physician, shall be paid all earnings up to date so laid up, and thereafter be paid his monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

Section 40. A complete and certified medicine chest must be kept aboard at all times when ship is in commission. All members while engaged under this agreement shall receive free medical and surgical attendance, excepting venerial diseases.

Section 41. All claims pertaining to rate of pay, overtime, meals or lodgings, must be filed with company within thirty days after termination of the articles.

Section 42. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 43. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof the parties hereto have set their hands and seals this ..... day of ....., 1940.

ALASKA SALMON INDUSTRY, INC.

By .....

For: ALASKA PACKERS ASSOCIATION
RED SALMON CANNING CO.

MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 97, Inc.

By .....

MARINE ENGINEERS' BENEFICIAL ASSOCIATION NO. 97, INC. GAS OPERATORS AGREEMENT

This agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons appointed by the Company. The parties shall submit any such dispute to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine-room officer shall be required to work under conditions which are in-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

imical to his personal safety or health. No licensed engine-room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine-room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section 3. Authorized representatives of the union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the engine room department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available provided they are qualified to fill such positions. All Marine Engineers or Operators must be members of the Union in good standing. The Company shall select its licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.

Section 5. Any engineer or operator covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

this agreement. This shall not apply to any employee relieving any employee for ten days or less.

Section 6. When vessels used in transporting men to Alaska are in any port and meals are not furnished, $3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, $2.00 per night shall be allowed for such. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

(a) Jurisdiction is hereby claimed by the Union over all engineers and/or operators on all tug boats and launches regardless whether or not they have pilot house control, except where the vessel is controlled by signal or bell system from pilot house, when in such case an engineer or operator shall be in charge in the engine room.

Section 7. When the vessels are in commission, the engineers and/or operators employed on dispatch launches and tug boats employed by Company on vessels as herein designated shall be paid not less than the following monthly salaries with subsistence, quarters, bedding, soap, matches, change of linen every week, maintenance and care. In the event the linen, towels, soap is not issued after written notice is served on proper authority on the seventh day of each week, a penalty of One Dollar ($1.00) per day shall prevail until same is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

received unless due to cause beyond control of the Company. Sufficient blankets shall be furnished each man.

	Horse Power	Wages
Dispatch boats and tugs	10 to 35 H. P.	$150.00 per mo.
Tugs and power barges	36 to 100 H. P.	160.00 " "
Tugs and power barges	101 to 150 H. P.	170.00 " "
Tugs and power barges	151 H.P. and up	180.00 " "
Dispatch boats "Loon" "Peregrin" and "Plover"		160.00 " "

A Ten Dollar ($10.00) increase per month shall be paid over scale to engineers or operators employed on twin screw tugs or power barges.

Ten Dollars ($10.00) extra per month shall be paid over the scale to engineers or operators on tugs, or power barges with pilot house control.

Section 8. In lieu of all overtime, except as hereinafter provided, the engineers and/or operators shall receive the appropriate percentage on the pack as follows:

For 8 line cannery	$1.25 per M cases
For 7 line cannery	$1.43 " "
For 4 line cannery	$2.50 " "
For 2 line cannery	$5.00 " "
For 1 line cannery	$10.00 " "

Engineers and/or operators shall tally fish when required without payment of overtime.

Section 9. (a) Prior to time tugs, launches, dispatch launches, and power scows are put in commission when operator or engineer is engaged in repair or maintenance work, working hours shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be eight (8) hours in twenty-four (24) hours reckoned from midnight to midnight. Operators shall assist in all repairs on their own boats, but this shall not apply to machine shop work.

When an operator works other than repairing, operating or maintaining dispatch boats, tugs, launches, or power scows, that work shall be classified as overtime. This shall not apply to tallying fish. Overtime rate $1.25 per hour.

(b) The engineer or launch operator shall be furnished with an official log book. A complete log shall be kept by the operator or engineer of each day's work, in duplicate form. The original copy to be turned in to the official timekeeper and the carbon copy to be retained by engineer or operator. In the event of a dispute the time keeper will refer the matter to the delegate. In the event a satisfactory agreement cannot be reached the dispute will be referred to Section 2, page 1 of this agreement.

(c) All tug and launch boat operators and engineers pertaining to this agreement, their wages shall start seventy-two (72) hours from time of dispatching ship, providing, however, no picket line shall delay the vessels sailing, or cause beyond companies control. Time and date of ships sailing to be noted on Union dispatch card by company agent and signed. In the event ship sails before seventy-two (72) hours elapsed, wages shall start at said sailing date.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) Any member laid up through sickness or accident, resulting from employment or environment who is unable to work according to the judgment of a physician, shall be paid all earnings up to the time so laid up, and thereafter be paid his monthly wages, transportation and subsistence, until placed in a hospital in Seattle or San Francisco.

All members while engaged under this agreement shall receive medical and surgical attendance, and medical and surgical necessities on the vessel, excepting venereal diseases.

(e) Each launch shall be furnished with provisions to last at least one week, and when cooks are not provided, an engineer or operator who does his own cooking, shall be compensated at the rate of $.65 per meal. Dispatch launches shall not be considered as coming under this section.

(f) Launch, dispatch and tug boat operators enroute to and from the fishing grounds shall be quartered two (2) to a stateroom if possible. The rooms are to be serviced once a day, and clean linen is to be supplied once a week. They shall be served meals in the officers mess, and also be served in the officers mess at the canneries. At the canneries when the operators live ashore, they are to be quartered two (2) to a room if possible.

(g) If employer sees fit, engineers, launch and tug board operators who have been in the employment of the Company during the last season shall be given preference of employment and promoted

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

when opportunity presents itself. At employer's option, engineers will have the privilege of going back to jobs on which they served last, provided former employee is in good standing in the Union.

(h) If arrival of any ship in the home port is after 12 o'clock midnight, a full day's pay shall be given.

Section 10. For the purpose of this agreement the home port shall be considered the port where the company's office and terminals are located and articles are signed and terminated.

Section 11. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 12. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is aabndoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

In Witness Whereof, the parties hereto have set their hands and seals this ..... day of May, 1940.

MARINE ENGINEERS' BENEFICIAL ASSOCIATION NO. 97, INC.

By .....

ALASKA SALMON INDUSTRY, INC.

By .....

For Alaska Packers Association

Red Salmon Canning Co.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

MARINE COOKS & STEWARDS
SEASON 1940

This Agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Cooks and Stewards (herein referred to as the Union),

Witnesseth:

The Union claims jurisdiction in the preparation and serving of food to all crafts, except cannery workers, on all floating equipment and at all canneries, provided that men at pumping stations and on boats and small power scows who have prepared and served their own food in the past may continue to do so. The Company agrees to recognize the Union as representing all members of the Stewards department from the day of hiring at San Francisco until the day of discharge at San Francisco.

The Company agrees to hire all members of the Stewards department through the hiring hall of the Union, and the men shall except as otherwise herein provided be assigned to their specific jobs from the Union hiring hall.

Section 1. It is expressly agreed that neither the Company, Superintendents, nor any agent of the Company, nor any representative of the Union has the power or authority to change any of the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. The Union in all cases shall judge and determine the qualifications of its members, provided that the Company shall not be required to employ unsatisfactory men or men who have quit during previous seasons while in Alaska, and provided further that Chief Stewards and Storekeepers, when employed, may be selected by the Company and shall not be subject to assignment from the Union Hiring Hall.

Section 3. Any member signed up and discharged without valid cause shall be paid one month's salary within 24 hours. The Union and the Company shall jointly determine what constitutes valid cause, and if no agreement is reached, shall be submitted for adjustment or arbitration.

Section 4. No member shall be required to pass through a picket line established by organized labor, nor work where armed guards are used or employed during a dispute; refusal to pass such picket line shall not constitute a violation of this agreement.

Section 5. San Francisco prices shall prevail in the Company Commissaries and cigarettes shall not be sold at more than one dollar and forty cents per carton.

Section 6. Members signing on for one cannery or ship shall not be transferred without the consent of the membership.

Section 7. Standby wages shall be paid at the rate of $6.50 per day for all men.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 8. The Union is opposed to gambling in any form and the sale and use of dope and the excessive use of intoxicating liquors. Stewards and Delegates will cooperate with the Company in preventing these vices.

Section 9. A committee from the Union shall investigate all ships at least five (5) days prior to sailing and to see that proper working gear is supplied and quarters satisfactorily arranged.

Section 9 (a) Where accommodations will allow in present bunkhouses, spring cots will be installed in place of bunks two high.

Section 10. On board ships and ashore in the canneries, no member shall be required to work or sleep where conditions are such as to be inimical to his health or well-being.

Section 11. The Company agrees to furnish comfortable sleeping quarters ashore including recreation room and adequate bathing and sanitary facilities for the exclusive use of the Stewards department. Where same are not now available they will be provided as soon as possible after arrival.

All windows and doors shall have full screens.

Section 12. When ashore, except in event of conditions beyond control, when heat is not furnished, bathing facilities, or proper lighting are lacking, a penalty of one dollar ($1.00) per day per man shall be imposed until such conditions are properly adjusted. At canneries generators will run until

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

11 P.M. so that lighting will be available until this hour.

Section 13. Where men are sent ashore in Barges, proper shelter shall be provided for all men and their belongings, with sufficient life-preservers for all men on the Barge. Traveling time to and from Cannery and ship shall be considered working time. If members miss a meal while traveling between ship and shore, they shall be paid for such at the agreed rate. Members other than Barge or Lighter Crews shall not be required to travel on same when heavy machinery is being transported. Neither the M. S. Madrono nor the M. S. Kvighak shall be considered as Barges within the meaning of this section.

Section 13a. The Company agrees to send wires to all locations notifying the winte men to have kitchens and living quarters in livable and sanitary condition for crew to come ashore. Copies of telegrams to be furnished to the Union.

Section 14. Sufficient Steward's working equipment, such as mops and mop buckets with wringers, brooms, dust pans, etc., shall be provided for ship and cannery use.

Section 15. A sanitary man is to be employed for each cannery except at Ugashik to keep toilets and bathing facilities clean in all canneries and on board ships, and to remove garbage from cookhouse to dumping grounds. He shall keep grounds clean around the kitchen and mess rooms, and shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

carry coal for kitchen or bunkhouse use, and shall take care of live chickens if taken. The sanitary man shall also make beds and assist janitor if required.

Section 16. Janitors shall be provided to keep stewards' quarters clean (and in all other departments entitled to such service) and shall keep bathing and sanitary facilities in bunkhouses clean and shall make beds. A janitor shall not be required at Ugashik.

Section 17. At no time shall members be required to do any work which rightly belongs to another organized group.

Section 18. Except at Ugashik, no messman shall operate a laundry in addition to his regular work.

Section 19. The Company shall furnish each man with a bedspring, mattress, and pillow, also a white slip and two white sheets to be changed every seven (7) days, and face and bath towels to be furnished twice a week. A spread and two good blankets shall be furnished each man, who will be responsible for same. When linen is not provided on the seventh day, the Delegate shall notify the Chief Steward to this effect and if no change is made on the following day a penalty of one ($1.00) dollar per man per day will be charged. Face soap of good quality, preferably Palmolive, matches, and laundry soap shall be furnished weekly also.

Section 20. Where Laundryman washes for more

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

than one (1) Cannery, he shall be allowed an Assistant Laundryman.

Section 21. Waiters' coats, aprons and Cooks Butchers' and Bakers working gear, and dish towels shall be washed by the Company Laundry without charge.

Section 21a. Waterproof aprons shall be provided for dishwashers and scullions.

Section 22. The Company shall furnish daily radio dispatches, including uncensored and undiluted labor news, provided that there shall be no obligation to furnish such dispatches or news if to do so requires payment of overtime to any of Company's employees. Victrolas with records shall be placed in recreation rooms.

Section 23. Sufficient members of the different crafts shall be hired at least five days in advance to get ships in condition and see that stores and meat are properly stowed. This does not include tugboats, or M. S. Madrono or Kvighak.

Section 24. A Chief Steward shall be carried on the Etolin, Chirikof and American Star, who shall serve in the same capacity ashore.

Section 25. In all Canneries of four lines or over a storekeeper shall be carried to handle all Steward's stores from warehouse to cookhouse. No Member will be required to handle stores either on or off ship except petty stores, handled by Launch Cooks. In addition to his other duties he shall clean the hams and bacons, and sprout potatoes and onions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Where storekeeper is not required, scullion shall carry stores to cookhouse. The storekeeper shall carry launch stores to the dock as required, without payment of overtime.

Section 26. Employees shall prepare, serve and clean up after three (3) meals each day, and prepare, serve and clean up after coffee as customary during the day at straight time.

In lieu of overtime for this work men shall be paid the sum of $150.00 each with the exception of those working while in Alaska, on launches, tugs, bunkscows and power scows.

Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage except to men working on percentage but this does not include Saturday afternoons and Sundays at sea.

Three Dollars ($3.00) will be paid to those day men actually engaged in preparing, serving and cleaning up after hot night meals and $1.50 to those day men actually engaged in preparing, serving and cleaning up after night cold lunches or coffee or both. The Steward shall designate the number of men to be employed.

Section 27. Men working while in Alaska on launches, tugs, power scows and bunkscows will do work before and after such transfer as directed by Steward from time of leaving San Francisco until return without payment of overtime.

Section 28. Men working on launches, tugs,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

power scows and bunkscows to receive in lieu of overtime, except as provided in Section 29 percentage on the total pack of cannery or canneries to which assigned, as follows:

Eight lines	$1.25 per thousand cases
Seven lines	1.43 per thousand cases
Four lines	2.50 per thousand cases
Two lines	5.00 per thousand cases
One line	10.00 per thousand cases

Section 29. Men working on launches, tugs and power scows will prepare, serve and clean up after three meals and coffee as customary each day and set out cold cuts and coffee before going off duty without payment of overtime.

Hot night lunches are not to be served unless ordered and by written approval of Captain. Three dollars ($3.00) to be paid for night hot lunches.

Launch, power scow and tug cooks to carry their own stores as directed without payment of overtime.

Section 30. Bunk scow men where there are two shifts shall work on day shift from 6 A.M. to 6 P.M. and on night shift from 6 P.M. to 6 A.M. without payment of overtime.

Bunk scow men where there is one shift shall receive $25.00 each extra for the season.

Section 31. Power scow or launch cooks if designated to feed fishermen shall receive $25.00 extra for the season.

Section 32. Laundrymen, janitors, sanitary men and storekeepers, where employed shall receive

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

$150.00 in lieu of overtime except as provided in Section 35.

Section 33. Night men to work from 7.50 P.M. to 1 A.M. and from 3:30 A.M. to 6 A.M. Night men shall receive $150.00 extra for the season and overtime as provided in Section 35. Night cooks where no night messman is employed shall serve midnight lunch to firemen and watchmen.

Section 34. Bakers to do all work necessary and their hours of work shall be left to the discretion of the Chief Baker. Bakers shall receive $150.00 extra for the season in lieu of overtime except as provided in Section 35.

Section 35. Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage to men covered in Sections 32, 33 and 34 but this does not include Saturday afternoons and Sundays at sea.

Section 36. Sums paid in lieu of overtime, or as a bonus, or as percentage as provided herein shall be paid on a pro rata basis in the event men assigned to jobs to be compensated on these bases are so assigned and at work during portion of season only, and in no event shall both overtime and a bonus or percentage be paid for the same period of employment.

Section 37. On vessels and tugs en route to and from Alaska the meal hours shall be as follows:

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The meal hours at the canneries and on vessels and floating equipment while in Alaska shall be as follows:

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	12:00 noon to 1:00 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The Company shall require that meal hours be observed, and that if any meals are required to be served to any person (except members of the Steward's department) who arrives for meals after the hours above set forth, overtime will be paid for time actually engaged in serving and clearing up after such person. Such person shall be served, however, only upon written authority from the Superintendent or his authorized agent.

Section 38. When food and lodging is not available, meal and lodging money shall be paid as follows:

Breakfast	$1.00
Lunch	1.00
Dinner	1.00
Room rent	2.00

Section 39. The Company agrees to recognize the Union Delegate on board ships and in Canneries.

Section 39 (a). Any overtime claims shall be acknowledged in writing by the Company representatives in charge, whether on vessels or tugs in the can-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

neries, and in addition shall be acknowledged by the Chief Steward, where carried. Such acknowledgment shall state whether or not the work was actually performed. If there is any question or dispute concerning whether or not such work constitutes overtime under the provisions of this agreement, such acknowledgment shall not bind the Company to pay overtime, but shall be binding only as to the fact of the performance of the work. Disputed overtime shall be taken up directly by the Union with the Company for adjustment, and there shall be no stoppage of work pending adjustment. The Company agrees that acknowledgment of overtime claims as above provided shall be made promptly, and at specified times to be agreed upon by the delegates and the Company representative in charge.

Section 40. The following days shall be observed as holidays: Memorial Day (May 30th), Independence Day (July 4th), Labor Day (first Monday in September).

Section 41. When overtime is less than one hour, one hour shall be paid. The overtime rate shall be $1.00 per hour. The straight time hourly rate shall be 1/240 of the monthly compensation hereinafter set forth.

Section 42. Messman shall prepare and serve coffee when coffee is not made on range or when cook is not on duty.

Section 43. The Company will engage the same number of messmen for the respective canneries as

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

was engaged for each such cannery in 1939, provided that the same number of men are employed there in 1940.

Section 44. Messmen shall be required to do any scullion's work except on tally-scows, launches, tugs and pile drivers, and on the M.S. Kvichak and M.S. Madrono.

Section 45. Port Steward's instructions to members of the Stewards Department shall be transmitted through the Chief Steward.

Section 46. All pots, pans and dishes shall be washed in separate sinks in the canneries.

Section 47. All sinks shall be constructed of galvanized steel or shall be metal lined.

Section 48. Launch cooks staying ashore in excess of three (3) weeks shall receive second cook's wages only for the time actually spent ashore.

Section 49. Where bakers bake bread for the stores they shall be paid 7½c per loaf.

Section 50. When a member is incapacitated through drunkenness in cannery or on ship the Union delegate, with the Steward or Superintendent, shall deduct his wages from payroll at the rate of two (2) days for each day so incapacitated, the man or men doing his work to receive the amount deducted in lieu of overtime.

Section 51. When a member is in the judgment of a qualified physician incapacitated (meaning sickness through no fault of his own), the man or men doing his work shall be paid the same wage he re-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ceived, provided that under such circumstances no member's wages shall be reduced.

Section 52. Where members are required to submit to physical examination, same shall be done in a dignified manner with regard to the method employed. All physicians and surgeons shall be licensed practitioners. When members are rejected, the Union reserves the right to furnish doctors for re-examination. In addition to the Medical Officers, the Company shall provide a sufficient number of First Aid Attendants and also First Aid and Medical Chests. No fees of any kind shall be charged by the Company or its Medical Staff for services to any member except for social disease and injuries resulting from drunkenness. Where members require surgical attention they shall be transported to the nearest hospital.

Section 53. Sufficient help shall be hired in San Francisco so that it will not be necessary to hire natives for the Stewards' Department except natives to wait on natives.

Section 54. Wages shall start forty-eight (48) hours after signing articles providing, however, that if ship sails prior to the termination of said forty-eight hours (48) hours, wages shall start as of date of sailing.

Section 55. When launches are taken from San Francisco to Alaska or Alaska to San Francisco under their own power, their own power, the run money shall be negotiated.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 56. Ship's cook shall receive one (1) hour overtime when meats are taken from ship's ice-box for cannery use if he supervises this work.

Section 57. All meals shall be served on crockery ware and satisfactory table gear shall be provided.

Section 57. Upon completion of the season's work and the day before actual arrival of vessel at point of discharge, the men shall be given an advance of Ten Dollars ($10.00). In no case shall members be compelled to wait more than forty-eight (48) hours to be paid off in full, except on Sundays and bank holidays. If for any reason, members are forced to wait more than forty-eight (48) hours for their full wages, they shall be paid at their regular rate for each day that they are compelled to wait, except Sundays and bank holidays. This shall not apply to compensation which is in dispute.

Section 59. A work schedule with the assignment of each employee in the Stewards' Department as to hours and duties shall be prepared and posted by the Chief Steward within twenty-four (24) hours after sailing, and in the canneries a work schedule shall be prepared and posted by the Chief Steward within twenty-four (24) hours after arrival.

Copies to be furnished to the delegate on the ships and in the canneries as soon as they are prepared for posting.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Schedule can be changed if found necessary by the Chief Steward.

Section 60. The Union agrees to furnish competent men within the employment covered by this agreement.

Section 61. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 62. The following wage scale shall apply to Bristol Bay:

Chief Steward	$200.00
Chief Cook	165.00
Ship's Cook	165.00
Second Cook	140.00
Night Cook	140.00
Blue Room Cook	140.00
Launch Cook	115.00
Cook and Steward (Tug Boats Only)	165.00
Butcher	140.00
Chief Baker	165.00
Second Baker	140.00
Scullion	90.00
Dishwasher	87.50
Straight Laundryman	105.00
Assistant Laundryman	82.50
Messmen	82.50
Sanitaryman	82.50
Janitor	82.50
Storekeeper	120.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 63. With respect to the Manning Scale and Working Schedule for Diamond "P" Cannery, the Red Salmon Canning Co. proposes to take:

One (1) Chief Cook.

One (1) Second Cook—who remains on the American Star during discharging and loading and is ashore during the fishing season.

One (1) Night Cook—both on the American Star and ashore.

One (1) Ship's Cook—who remains on the American Star the full time.

Four (4) Launch Cooks—for Power Scows.

One (1) Launch Cook—for the Leader who acts as Scullion on American Star during period of discharging and again during the period of loading, for additional pay of $10.00 per month for the season.

One (1) Baker.

One (1) Second Baker.

One (1) Scullion.

One (1) Messman—who serves on the Fram as Launch Cook during the fishing season and receives the rate of $115.00 per month for the fishing season—or on board the Fram as Cook.

One (1) Messman—who takes care of the Petty Officer's Mess on the American Star and remains on board the American Star during the full time in Alaska, and for the additional payment of $10.00 per month for the season, makes beds, cleans the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

rooms and washes the dishes for this mess and the men concerned.

Two (2) Messmen—who act as Messmen on board the American Star during the discharging and loading periods and receive $5.00 per month for the season extra for washing dishes during the time on the American Star discharging and loading.

One (1) Messman—who dishes up for the saloon on the ship and washes dishes for the saloon and who washes dishes while waiting on the Blue Room ashore, to receive $10.00 per month additional for the season.

One (1) Messman—who goes on tally scow during the fishing season.

One (1) Messman who acts as night Messman on the ship and goes to the Fishermen's mess ashore.

Two (2) Straight Messmen—who wait on Mechanics' Mess on ship and ashore.

One (1) Dishwasher.

One (1) Sanitary Man.

One (1) Janitor.

One (1) Laundryman.

One (1) Second Cook and Baker—who goes up on the Madrono,—goes to Diamond P Cannery—goes on the Tally Scows during fishing season,—back to Diamond P and returns on the Madrono.

One (1) Launch Cook—who goes up on the Madrono,—goes to the Pelican,—Diamond P Cannery and acts as Second Cook on Pelican during fish-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ing season—stays on the Pelican during loading and returns on the Madrono.

One (1) Messman—who goes up on the Madrono, —does to Diamond P, and returns on the Madrono —who washes dishes, takes care of rooms and makes bed for the few men concerned.

This makes a total of twenty-eight (28) men for Diamond P.

For Ugashik (F)

One (1) Second Cook—who goes up on the American Star—goes to Ugashik and during the fishing season, may act as Cook on the Power Scow, or as Tally Scow Cook.

One (1) Baker—who goes up on the American Star, goes to Ugashik, remains there until he returns on the American Star, who also is to make 9:00 p.m. coffee only at Ugashik at night.

One (1) Scullion—who goes up on the American Star, goes to Ugashik, remains there and returns on the American Star.

One (1) Messman—who goes on the American Star, goes to Ugashik during the entire season and returns on the American Star.

One (1) Messman—who goes on the American Star, waits on table in the saloon—goes to Ugashik for the entire season and returns on the American Star, doing the same work, who does laundry at Ugashik on overtime.

One (1) Dishwasher—who goes up on the American Star—goes to Ugashik for the full season and returns on the American Star.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

One (1) Steward and Cook—who goes on the Madrono and who is Steward and Cook at Ugashik, and returns on the Madrono.

One (1) Second Cook—who remains on the Madrono during the entire season as Cook.

One (1) Messman who goes on the Madrono and washes dishes and makes beds while on the Madrono and stays on the Madrono all season.

One (1) Messman—who goes on the Madrono—goes to Ugashik, handles the Blue-Room and Mechanes' Mess, washes dishes and helps make beds on the Madrono and ashore at Ugashik—takes care of the rooms and makes beds where necessary, for the additional sum of $10.00 per month for the season.

Total of ten (10) men for Ugashik .

Section 64. It is understood that during the fishing season, Messmen employed on the Bunk Scows may be brought to the canneries on Saturday nights if desired, to assist in waiti g on fishermen.

Section 65. The work involved on the trip of the Madrono to Alaska and return, is well understood by your Committee and it is agreed that the Madrono shall carry the same number of men in the Stewards' Department as in 1938, with the exception that the Madrono Cook shall be signed as Second Cook and all work shall be performed regardless of rating and for wages specified in Ship Articles, to including making up rooms and beds of those who are entitled to such service, washing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

dishes and pots and preparing vegetables, and when such skeleton crew goes ashore in Alaska, to continue to perform all such work of the Stewards' Department until arrival of a full crew carried on the American Star, at which time men will do only such work as called for under their ratings. The Messmen left aboard the Madrono and American Star also to wash dishes, and make beds and care for rooms of the few men requiring such services, to be signed as ship Messmen.

Section 66. Any limitation of hours that may be applicable under the Federal Fair Labor Standards Act shall be applied in operating under this agreement.

ALASKA SALMON INDUSTRY, INC.

By .....

For ALASKA PACKERS ASSOCIATION
RED SALMON CANNING CO.
MARINE COOKS' AND STEWARDS' ASSOCIATION OF THE PACIFIC-C I O.

By .....

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

April 19, 1940.

Alaska Fishermen' Union
49 Clay Street
San Francisco, California

Gentlemen:

In accordance with our discussion yesterday we submit the following to you as our proposal for the 1940 season at Bristol Bay.

We desire to establish certain uniform conditions in all contracts covering the Bristol Bay operation, and for this purpose propose the following:

1. All contracts shall expire on January 1st, and shaould be automatically extended thereafter from year to year unless on or before the preceding first of December, either party notifies the other party of termination of the contract or requests re-negotiation for the following year.

2. The employer shall not be liable for any penalties if the condition upon which they depend has been brought about directly by a labor dispute involving job action not based on a violation of contract by the employer.

3. There shall be no obligation on the part of the employer to continue employment if vessels are disposed of or chartered or if the expedition is abandoned.

4. The employer shall have the right to select the supervisory employees, with the understanding that such employees may be members of any craft

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

now having bargaining relationships with the employer.

To provide for the 1940 season at Bristol Bay only, we propose to you, in addition to the foregoing, the 1939 contract of the Alaska Packers Association with the following modifications:

1. Section 5 (b) shall be changed to read:

"If vessels call for cargo or personnel at any intermediate port or cannery in Alaska, other than on Bristol Bay, on the home voyage, men not on monthly wages shall receive, in addition to full run money and all other earnings, coasting rates from date of arrival until date of departure, both dates included. Men handling cargo shall each receive One Dollar extra per hour in addition. If calls are made at more than one port or cannery, other than in Bristol Bay, the payment of coasting rates shall continue until date of leaving the last port of call."

Alaska Fishermen's Union
Page Two
April 19, 1940

2. Section 5 (d) shall be changed to read:

"Any man signing this agreement and discharged without his consent before sailing shall receive Seventy Five Dollars as full compensation, to be paid within forty eight hours after such discharge, provided that this section shall not apply in the event that the expedition for which the man has been engaged is unable to sail because of a labor dispute."

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

3. Section 12 shall be changed to read:

"Sec. 12. Boat crew having swamped their boat shall assist in salvaging their own equipment, provided, however, if detained from fishing more than three hours after having reported themselves at the cannery to the superintendent or whoever may be in charge, or six hours if having reported themselves elsewhere to an authorized person of the same company (authorized persons herein referred to, to mean any of the company's tally-men in charge or captain of launches), they shall be put to work until such time as boat is provided, and for which work they shall be paid average, or the limit, as the case may be. This rule shall also apply to boat crew requiring repairs on their boat."

4. Section 13 (d) shall be changed to read:

"Any other seaman, fisherman or trapman who has signed for monthly wages and percentages and who is laid up through sickness or natural ailments, and is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid his respective monthly wages until placed in a hospital in San Francisco, Seattle, or Astoria, or if resident fisherman, in the nearest hospital. In the event of dispute, the Superintendent will make effort to secure the opinion of another qualified physician."

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

5. Section 15 (a) shall be changed to read:

"Sec. 15. The employer through its superintendent or agent in charge may at any time discharge any party of the second part for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge."

6. The second paragraph of Section 16 of the 1939 contract shall be deleted. This paragraph now reads:

Alaska Fishermen's Union
Page Three
April 19, 1940

"The delegate, on request shall be furnished with a copy of the diagnosis in regard to any accident, injury, or illness to any member, and said member or any person designated by him shall be permitted to examine all medical or other reports in regard to any accident, injury or illness pertaining to him."

7. The second paragraph of Section 22 shall be changed to read:

"Coffee shall be served at the ships and cannery to all hands at 3 p.m. and at 9 p.m. if working. After 9 p.m. fishermen must serve themselves."

8. It is desired to make a separate contract for beachmen and net tenders, in which will be placed all relevant provisions of the 1939 contract as modified herein.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

9. With regard to the price per fish as set forth in Section 4, each gill-net fisherman shall receive in addition to the other moneys therein mentioned, the sum of six cents for each Red or Coho salmon, instead of the sum of Seven and One-Eighth cents as provided in 1939, with proportionate reductions to be made in the price to be paid for all other varieties of fish.

10. With regard to the sums paid on cases of salmon as set forth in section 4, the same proportionate reduction will be made from the sums paid in 1939 as set forth above with reference to the price per fish.

11. The matter of compensation for net tenders we desire to leave open for further discussion.

We are sending to you, in answer to your request, written replies of Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company, to your communications regarding improvements at the respective canneries. These are submitted to you with the understanding that they are not to be taken as representations that there will or will not be expeditions to Bristol Bay this year, or that the specific canneries therein mentioned will or will not be operated. With this understanding, the operators have authorized us to state to you that the improvements and changes

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

agreed to be completed will be done during 1940, labor relations and the weather permitting.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE.

JPS/OB

PACKERS PROPOSAL 1940

Agreement

This Agreement, entered into this..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., each herein referred to as the Company), and International Association of Machinists, San Francisco Lodge No. 68 and East Bay Union of Machinists (each herein referred to as the Union) and each of the men signing hereto in the capacity of cannery Foremen, Machinists, Iron Chink Men, Seamer Men, Refor Men, Filler Men, Combination Men, Salmon Cooks, Utility Mechanics, and Mechanical or General Helpers, who work in the salmon canneries in Alaska,

Witnesseth:

Section 1. The parties of the second part hereby engage in the services of said company and promise for the consideration hereinafter mentioned, to work according to the lawful orders of the Superintendent, or whomever may be in charge during the time they shall remain in the employ of said company

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in the capacity under which they have signed this agreement. Also to repair and maintain all machinery and mechanical equipment on boats, lighters and vessels and to operate, repair and maintain all machinery and mechanical equipment in the canneries to which they may be assigned according to the terms of this agreement and for the compensation herein provided in accordance with the classification herein provided, which shall be the terms of employment and the schedule of compensation for the 1940 season.

Section 2. At least one week before sailing, the company shall furnish the representative of the Association as complete a list as possible of the crew coming under the jurisdiction of the Union.

Section 3. All employees hired at the port of embarkation under this agreement shall be members in the Union. The Union recognizes that the Company will hire men in Alaska and agree to furnish such men if available. Bona fide residents of Alaska shall be given preference.

Section 4. The Company shall agree to pay the following rates of pay to the various classifications of employees who shall be members of the Union.

Section 5. The following are the rates of pay for the 1940 season.

BRISTOL BAY

Maximum Season, 3 Months 10 Days.	
Foreman, 3 or more lines	$2,300.00
Foreman, 2 lines	2,200.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Foreman, one line cannery which does not employ first machinist	2,000.00
Foreman, one line cannery which employs first machinist	1,800.00
First Machinist	1,200.00
Second Machinist	850.00
Shop Machinist	850.00
Iron Chink Man (2 chinks or more)	750.00
Iron Chink Man (1 chink)	600.00

An Iron Chink Man, in order to be under this classification, must be a Machinist of sufficient experience to do all his own repair work on Iron Chinks. If unable to perform such work he will be under the lower pay bracket, regardless of the number of machines in the Cannery. The number of Iron Chinks regularly operated during the season shall be used as the basis for determining the rate of compensation.

Fillerman, Seamerman, Reformerman, Combination Man, New Automatic Labeling and Casing Machine Operator	$ 600.00
Salmon Cook	500.00
Mechanical Helper	400.00

If men are required to work longer than the time stipulated for the District in which they are working, they shall receive additional compensation over and above the amount fixed for their class of work for such stipulated period, the same to be computed and paid at a daily rate equal to the total amount of the agreed pay for the stipulated period divided by the number of days in such stipulated period. This shall not apply to Cannery Foremen,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

whose season shall be as has been customary in the past.

Section 6. Nothing herein shall preclude the payment of higher rate at the discretion of the employer, and no one shall be discriminated against for his Union activities.

Section 7. Hours of work during Canning Season: Eight (8) hours in a spread of any nine (9) consecutive hours shall constitute a day's work, computed from midnight to midnight. Six days shall constitute a regular week's work and the Company may elect which day shall be the day of rest. The foregoing limitations shall not apply to Foreman. The Cannery Superintendent shall determine the beginning and ending of the Canning Season. When an employee has terminated a shift, he shall not be required to start work again until a four (4) hours rest period has elapsed, unless he receives overtime pay, provided that employee shall put in eight consecutive hours of work in a spread of nine (9) hours at straight time in every twenty-four (24) hours from midnight to midnight.

Section 8. Hours of work Before and After Canning Season: Eight (8) hours shall constitute a day's work between the hours of 8 A. M. and 5 P. M. with one hour lunch period to be reached by mutual agreement.

Section 9. Overtime and Holidays: Any time worked in excess of the regular eight (8) hours within a twenty-four (24) hour period, midnight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

to midnight, and any time worked on the day of rest which shall have been designated pursuant to the preceding paragraph, shall constitute overtime and shall be paid for at the following rates:—

OVERTIME RATES FOR ANY CANNERY

Section 10. The rates of overtime compensation shall be as follows:—

	First 150 hours per hour	Balance of hours per hour
First and Second Machinist—(Shop Machinist)	$1.25	$1.50
Iron Chink Man, Filler Man Seamer Man; Reformer Man, Combination Man, New Automatic, Labeling and Casing Machine Operator	.92½	1.00
Salmon Cook, Mechanical Helper	.72½	.75

Iron Chink Man receiving the higher rate of pay, shall receive overtime at the rate of $1.25 and $1.50 per hour, for the respective hours.

Section 11. The following are legal holidays: Decoration Day, Independence Day and Labor Day. All work performed on above holidays to be paid for at overtime rates. When holidays fall on the day of rest, the following day shall be observed.

Section 12. Employees must have their working time entered and approved daily in their time books by the bookkeeper or foreman. Employee shall receive a complete statement of season's earnings within forty-eight (48) hours after arrival at home port. In the event that the service of an employee is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

not satisfactory, barring him from re-employment with the Company the following season, the Company shall so notify the employee through the Union and furnish the Local with a copy of same not later than December First.

Section 13. If, for the principal part of the season any employee shall be assigned to any employment carrying with it a higher rate of wage than that for which he was originally employed, such higher rate of wage shall apply to his entire employment under this agreement and appropriate adjustment shall be made accordingly when employee is paid off. Provided, however, that if such change of employment is due to the injury, sickness, death, incapacity, change of employment, quitting or discharge of another employee, then any increased rate of pay shall apply only from the time employee is advanced. Any employee unable to satisfactorily fill the position for which hired or to which he has been transferred, may be transferred to a position with a lower rate of pay if reasons are furnished to the delegate. In such case he shall receive the higher rate only during the period so employed. The Company agrees to sign the men on in their various capacities before leaving port of embarkation. It is mutually agreed that members of the Union, when employed in salmon canneries shall be permitted by said Union to work at various and sundry jobs within a salmon cannery during the actual canning season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 14. During the operation of the cannery, provision shall be made to keep the general crew quarters ashore clean, make fires when necessary and to keep said quarters in a sanitary condition. All canneries shall have good, clean shower baths and laundry room and all men shall be furnished a good cotton mattress and spring. Laundry soap and washing powder shall be furnished.

Section 15. When men are required to work where oil skins and boots are necessary, the same shall be furnished by the Company free of charge and the same shall be returned to the Company at the close of the season at the discretion of the Superintendent.

Section 16. One hour shall be allowed for all regular meals except during the height of the canning season. The limits of meal hours shall be: Breakfast, 6 to 8 A. M.; Dinner, 11 A. M. to 1 P. M.; Supper, 5 to 7 P. M., except where mutually agreed. Men at the cannery required to work until midnight shall receive hot coffee and lunch. Men who continue to work after midnight shall receive hot meal at the mess house.

Section 17. Men shall be privileged to stop work for 10 minutes for coffee at the customary hours prevailing at the cannery.

Section 18. The Company agrees to recognize one employee at each cannery, designated by the members of this Union at such cannery, to act as the delegate and representative of this Union, whose

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

duty in addition to his regular prescribed duties as an employee, shall be to see that the members of this Union in that cannery observe the agreement and at the same time that the rights and interests of such members under the agreement are protected.

Section 19. No employee shall be required to be alone in a cannery to do repair work.

Section 20. Any employee covered by this agreement, who from injury sustained while at work for the company, through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay according to this agreement during the period of the injury. Provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Territory of Alaska, or any other Compensation Act, Territorial Federal or State, the Company will pay the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment. Employees, if and when injured. shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment.

Section 21. Any employee covered by this agreement who is laid up because of sickness, or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physican, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of $50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's liability shall cease. If, however, it is necessary for the Company to guarantee hospital expenses, etc., in order to place employee in hospital, such expenses shall be borne by the employee. It shall be, however, the thorough understanding that in the case of sickness or natural ailments, or an injury sustained outside of the scope of his employment, that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qual-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the $50.00 per month under the terms of this section. Provided, however, that in the event an employee contracts or suffers from a venereal disease, he shall be entitled to no compensation during the period he is unable to work, and the Company shall be under no obligation to furnish such employee medical attention or hospitalization.

Section 22. Should it be necessary to replace any man covered by this agreement during the season because of death, injury, sickness, quitting or discharge of another employee as referred to in Sections 31 and 32, the provision as to the guarantee period of employment are not to apply, and payment shall be made to such replacements only for the period employed based on the proportionate part of the season as defined herein.

Section 23. It is agreed that there shall be no gambling and no excess quantity of liquor shall be taken or sent aboard any vessel or any other Company property.

Section 24. It is expressly agreed that neither the Superintendent in charge, nor any other agent of the employees, nor of the Machinists' Union has the power or authority to change the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 25. School, Poll, Social Security, or other taxes assessed against employees for compensation insurance or hospitalization authorized by any Federal, State or Territorial law, shall be deducted by the employer from any wages due, and the employer shall withhold any payments when required to do so by writ of garnishment or legal proceedings, or by valid assignment.

Section 26. It is understood that before embarking, each employee shall submit at such time and place as the Company shall designate, to a medical examination. If any employee shall fail to pass such examination satisfactorily this contract shall be null and void so far as such employee is concerned.

Section 27. Whenever men employed under this agreement are asked to do longshore work they shall do so at the rate of 80 cents per hour.

Section 28. The employees party to this agreement shall not refuse to go through a picket line, unless such picket line is officially recognized by the Union. Employees refusing to go through a picket line shall receive no pay or compensation while work is suspended, and shall pay the Company board at the rate of $1.00 per day if furnished.

Section 29. This agreement shall not apply to canneries whose original outfiting for the season is based on 10,000 cases or less. The number of cases shall be computed upon the basis of a case of 48 pound talls or the equivalent.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 30. All men to be furnished adequate transportation or transportation on a cannery vessel which shall be considered adequate, provided that there shall be a regular bunk for every person aboard. Steerage transportation on regular passenger steamers shall not be considered adequate for men covered by this agreement.

Section 31. The Company, through its Superintendent or agent in charge, at any time may discharge any employee covered by this agreement for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge, and such discharged employee shall receive a pro rata part of his seasonal rate. However, if any employee is found to have been arbitrarily discharged, he shall be paid the wages he would have normally earned during the period lost by reason of such wrongful discharge, plus $1.00 per day for board, provided such employee paid board and was not otherwise employed during such period; all subject to adjustment by reason of wages such employee earned from time of dismissal.

Section 32. Any employee who quits shall be paid all wages and overtime up to date of quitting, but shall not be furnished return transportation to port of embarkation.

Section 33. Men discharged shall be given free transportation to port of embarkation, including maintenance.

Section 34. There shall be no strikes, lockouts

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

or stoppages of work during the period of this agreement for any cause by any employee, group of employees or the Union. Any disputes that cannot be settled at cannery are to be adjusted and settled after the season at port of embarkation of the expedition.

Section 35. Neither the Machinists' Union nor the employees covered by this agreement shall interfere with the performance of work outside the general scope of this agreement, provided such work is customary in the salmon industry in the particular locality, and is arranged for with the other employees by the employer on mutually satisfactory terms and conditions, nor shall the Machinists' Union nor the employees covered by this agreement interfere with the performance of work by other employees, provided it is customary in particular localities to employ other employees to do such work.

Section 36. When emergency requires, work necessary for safety of vessel or any other Company property shall be done at any time and without extra compensation.

Section 37. For the homeward voyage the Company is to have the right to transfer men from one vessel to another.

Section 38. Men transferred to work at another cannery shall receive in addition to all monies then earned, wages and working conditions prevailing at the cannery to which they are transferred in similar positions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 39. Men may be transferred from one cannery or district to another where that is agreed to at the time of signing this agreement or during the fishing season. Such men shall receive the prevailing wage for the time spent in each cannery or district, and an agreed proportion of the percentage based on the proportion of the season worked in each cannery or district, and they shall have the same working conditions as those prevailing under the agreement of the district containing the cannery to which they are transferred in similar positions.

Section 40. In the event the cannery is destroyed or so greatly damaged from any cause, or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company may terminate this agreement excepting that the Company shall return each employee covered by this agreement to point where hired, at its expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the Cannery.

Section 41. The parties hereto, hereby waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract shall be

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in accordance with the provisions of this agreement and without regard to the requirements of said Act.

Section 42. This contract is entered into subject to all present and future laws, rules and regulations which may be prescribed by the Government of the United States, the Secretary of Commerce, or other governmental authorities exercising jurisdiction; and if, at any time any of the provisions of this contract shall be contrary to any such laws, rules and regulations, then said provisions are, so far as they conflict with such rules and regulations to be considered abrogated and not binding on either of the parties hereto.

Section 43. There shall be no obligation on the part of the Company to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

Section 44. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered, or otherwise disposed of, and in case of such termination of employment the seasonal compensation hereinabove provided for shall be pro rated as of the date employment ceases.

Section 45. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 46. The Union agrees to furnish competent men within employments covered by this agreement.

INTERNATIONAL ASSOCIATION OF MACHINISTS, SAN FRANCISCO LODGE No. 68

By.....

EAST BAY UNION OF MACHINISTS

By.....

ALASKA SALMON INDUSTRY, INC.

By.....

For:

ALASKA PACKERS ASSOCIATION

RED SALMON CANNING CO.

PACKERS PROPOSAL 1940

Masters Mates & Pilots

Agreement

This Agreement entered into this ..... day of May, 1940, by and between Alaska Salmon Industry, Inc. (for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Co., each herein referred to as the Company), and Na-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tional Organization of Masters, Mates & Pilots of America, herein referred to as the Association and the Union,

Witnesseth:

Whereas, the Party of the First Part has been recognized by the Party of the Second Part as the representative of their licensed employees in the Deck Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions.

Now, Therefore, the parties hereto agree as follows:

Section One. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this agreement or requests its re-negotiation.

Preference of employment for all licensed deck officers shall be given members of West Coast Local No. 90, National Organization of Masters, Mates and Pilots of America in filling vacancies when available, provided that they are qualified to fill such position. The employer shall have the right to pick his own employee, provided, such employee is a member of the National Organization of Mas-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ters, Mates and Pilots of America in good standing, and shall register and be cleared through the offices of West Coast Local No. 90.

Section Two. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Party of the First Part and two persons appointed by the Party of the Second Part. The parties shall submit such dispute to decision by such board and they agree to be bound by such decision. In the event that said Board shall not agree, an additional member shall be appointed by them, whose decision shall be final. Should be Board fail to agree on appointment of additional member, the Secretary of Labor shall be requested to appoint one agreeable to both parties.

Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four (24) hours. However, no licensed deck officer shall be required to work under conditions which are inimical to his personal safety and health. No licensed deck officer shall be required to work within or pass through picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed deck officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section Three. Authorized representatives of the Party of the First Part shall have the right to go

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

on board ships of the Party of the Second Part at all reasonable times, at all ports, for the purpose of consulting with deck officers employed thereon.

Section Four. National Organization of Masters, Mates and Pilots of America, West Coast Local No. 90, San Francisco Headquarters, agrees to aid the Party of the Second Part in every way to maintain the highest possible calibre of licensed personnel employed in the Deck Department of all the vessels covered by this agreement.

Section Five. Any master, mate or pilot covered by this agreement, receiving a higher monthly wage than the minimum specified herein shall continue to receive the same during the life of this agreement.

Section Six. Vessels shall be considered in commission from the day of starting loading until the day vessels are returned to the laying-up grounds at the end of the season, both days inclusive.

This clause applies when vessels actually leave winter quarters and start in loading and proceed to sail for Alaska. Periodic loading during the lay up period shall not apply.

When in commission, a full complement of Mates shall be employed on each vessel. If this is not complied with, those officers who subsequently man the vessel shall be paid wages, subsistence and room money from the date vessel leaves winter quarters or their predecessors left the ship. No licensed officer shall be laid off while the ship is in commission.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Seven. During the first fifteen (15) days of a period at idle status the licensed officers shall be kept at full pay and subsistence, thereafter at monthly pay only.

"Idle status" for the purpose of this agreement shall mean a period of temporary lay-up between voyages at the company's yard and shall be reckoned from the time cargo has been discharged until the vessel begins to load again or proceeds to sea again on her next voyage excepting upon unusual curtailment of the fishing season.

Section Eight. When vessels are in commission and meals are not furnished, Masters and Mates shall each be paid subsistence of Three Dollars ($3.00) per day, ($1.00 per meal). If rooms are not in proper condition, such as beds not made up, no heat or light, additional allowance of $2.00 per night shall be paid each officer.

Section Nine. The members of the Association employed as licensed officers, shall at all times carry on their duties in the interest of and in accordance with the lawful requirements of the company, subject to the terms and provisions of this agreement. No Licensed Officer shall be dismissed except for cause to be stated in a written statement to the Association. An officer so dismissed shall have the privilege to place his case before the Personnel Board and the decision of the Board shall pass final judgment. At termination of fishing season the Employer to notify Local No. 90 in writing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

of the members who they do not wish to employ. There shall be no discrimination against any man for union activity.

Section Ten. The following days shall be observed as holidays in ports other than Bering Sea: All Sundays and Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, July 4th, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day and all other holidays observed in the Port the vessel may be in when in the United States of America. When any of the foregoing holidays fall on a Sunday, the following Monday shall be observed as a holiday.

Section Eleven. When sent from one ship to another or from one port to another in the course of employment, officers shall be paid their regular wages and expenses incurred in traveling. All transportation shall be first-class and include berth and meals while traveling. If subsistance is not included with transportation, subsistance allowance at the rate of $3.75 per day shall be paid. While ashore and no living quarters are provided, room allowance at the rate of $2.00 per day shall be paid.

Section Twelve. If, prior to the completion of the shipping articles, the vessel is withdrawn from service for any cause, Licensed Deck Officers shall be provided with return transportation and subsistance as provided in Section #11, to the port where articles were signed, unless another port is designated in the articles. Full wages shall be paid up to the time of arrival at such port.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Thirteen. Sea-watches shall be set at noon on days of sailing and shall continue until vessel arrives at next port. If the stay in port is less than 24 hours sea watches shall not be broken. When necessary to anchor, regular watches may be maintained at the discretion of the Master. Four hours shall constitute a sea-watch. Two such watches shall constitute a day's work.

Section Fourteen. For the safety of those on board, mates on watch while at sea, shall do no other work than regular watch duties.

Section Fifteen. At sea, all work in excess of eight hours, reckoned from midnight to midnight, overtime shall be paid. When sea watches are maintained, at sea or in port, Mates shall be paid overtime if called from watch below. No overtime shall be paid for work done for the safety of the passengers, crew or vessel, or for the safety of the equipment and cargo provided same shall have been properly secured and stowed before the vessel leaves the dock for sea.

Section Sixteen. While vessels are in commission the work of licensed deck officers shall consist of such work as is necessary for the safe navigation of the vessel and the supervision of loading, discharging and fueling operations and the supervision of other work performed for the safety of and maintenance of the vessel. No licensed officer shall be required to do work customarily performed by

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

seamen, such as washing, painting, etc. Officers may supervise such work.

Section Seventeen. Officers in charge of a watch shall each have their individual stateroom. All officers' quarters shall be properly equipped with running fresh water, cleaned daily, heated and lighted at all times during occupancy and be provided with sufficient clean linen and bedding. Each vessel shall provide a washroom for the use of Deck Officers only, this washroom to be equipped with hot and cold running fresh water and fresh water shower facilities and be properly drained. In case the provisions above are not complied with the officers involved shall be compensated at the rate of $1.00 per day while occupying quarters aboard ship.

These provisions shall apply to all vessels excepting the Kvichak, Kanak, Alitak and Chilkat. During the cannery voyages of the Chirikof and Delarof the 2nd and 3rd officers will not be supplied with individual staterooms.

The above provisions of Section 17 shall also be modified as follows: Second and Third officers shall not be supplied with individual staterooms on the SS American Star and SS Madrono on the voyage to Bering Sea or from Bering Sea returning, but on arrival at the fishing grounds these officers shall be supplied with separate rooms. On the Fram the provision regarding clean linen shall apply.

Section Eighteen. No deck officer shall be per-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

mitted to take charge of a watch upon leaving or immediately after leaving port unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing.

Section Nineteen. For all launches and tugboats on which heretofore both a Master and Engineer have been employed, the company agrees to employ Masters selected from the membership of the Association in the manner provided in Section #1.

Section Twenty. All licensed officers and launch masters shall have their meals served in the officers' Dining Saloon while on board and in the "Blue Room" while ashore.

When 10 A.M. and 3 P.M. coffee is provided for other members of the crew, the same shall be provided for the Mates. Masters and Mates shall have the right to make their own coffee, tea, cocoa, etc. at all times.

Section Twenty-One. A Licensed Deck Officer may stipulate in his shipping articles for an allotment of any portion of his wages as provided by law.

Section Twenty-Two. Masters excepting on Kanak, Chilkat, Alitak and Madrono shall be employed the year round and except as provided in Section 33 and shall be paid the following wages and while their vessels are in commission they shall receive in addition subsistance, quarters, maintenance and cure as customary.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Vessel	Out of Commission	In Commission
Bering	$250.00 per month	$340.00 per month
Chirikof	250.00 per month	340.00 per month
Delarof	250.00 per month	340.00 per month
Etolin	250.00 per month	340.00 per month
Kvichak	250.00 per month	300.00 per month
Kanak	180.00 per month	260.00 per month
Chilkat	180.00 per month	260.00 per month
Alitak	180.00 per month	260.00 per month
American Star	250.00 per month	340.00 per month
Madrono	200.00 per month	275.00 per month

Masters of above vessels do not receive overtime pay.

Section Twenty-Three. Masters on power boats who are not assigned as mate or master of any particular ship or tender, but who go up as passengers, shall receive not less than One Hundred Seventy Dollars ($170.00) per month; and percentages as provided in Section 25.

Section 24. The following monthly wages together with subsistance, quarters, maintenance and cure as customary shall be paid to Licensed Deck Officers according to their respective ratings.

Vessel	1st Mate	2nd Mate	3rd Mate
Bering	$220.00 per month	$200.00 per month	$185.00 per month
Chirikof	220.00 per month	200.00 per month	185.00 per month
Delarof	220.00 per month	200.00 per month	185.00 per month
Etolin	220.00 per month	200.00 per month	185.00 per month
Kvichak	205.00 per month	185.00 per month	170.00 per month

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Kanak

180.00 per month 170.00 per month

Alitak

180.00 per month 170.00 per month

Chilkat

180.00 per month 170.00 per month

American Star

220.00 per month 200.00 per month 185.00 per month

~~Androno~~

Madrono

190.00 per month 180.00 per month 170.00 per month

The rate of overtime pay for officers shall be $1.25 per hour. Overtime shall be paid for work which is not the regular duty of a Licensed Officer. Not less than one hour overtime shall be paid for an overtime period of less than one hour elapsed time. If the interval in time between overtime periods is less than two hours, overtime shall be paid continuously. Any work in excess of fifteen (15) minutes shall be considered as one hour overtime. During the period between arrival in and departure from Bristol Bay all Masters and Mates shall perform work to which they are assigned, such as supervising loading and discharging on vessels, tallying, serving as Beach Bosses or Masters of launches, or in any other capacity heretofore employed, without payment of overtime. In lieu of overtime during this period Masters and Mates shall receive the percentages set forth in Section 25-A.

Section Twenty-Five A. Masters of major vessels, Masters of tugs, launches and self-propelling

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

lighters shall receive in addition to their regular monthly wages percentages as follows:

Nushagak	$5.00 per 1000 cases
Kvichak	1.43 per 1000 cases
Naknek—Alaska Packers Assn.	1.25 per 1000 cases
Egegak	1.25 per 1000 cases
Ugashik	10.00 per 1000 cases
Naknek—Diamond P	2.50 per 1000 cases

B—In the case of salted salmon, each barrel of salmon is to be computed as four cases and each half barrel as two cases of 48 pound tall cans.

Section Twenty-Six. Masters and other licensed deck officers shall tally fish as required.

Section Twenty-Seven. In Port except Bering Sea for vessels carrying cannery crew and cargo to and from Alaska; for work performed on Saturday afternoons, Sundays and Holidays, for work performed on other days between the hours of 5 P.M. and 8 A.M. overtime shall be paid.

Section Twenty-Eight. All tugs, launches and self-propelling lighters shall carry sufficient deckhands.

Section Twenty-Nine. The Company shall have a registered physician with proper equipment and ample medical supplies stationed at each location or within reasonable call.

No Licensed Deck Officer shall suffer loss of wages and bonus because of accident or occupational disease contracted during employment, and necessary medical and surgical service, except for

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

venereal diseases, shall be supplied free of charge while in Alaska.

Section Thirty. Before an officer is paid off at the end of the season a complete statement of his earnings shall be given him by an authorized official; all disputes over earnings must be adjusted before pay is accepted.

Section Thirty-One. While ship is at anchor in winter quarters, power transportation must be furnished to and from ship. Boat must have inboard power and must be able to withstand winter storms in the Bay.

Section Thirty-Two. The Masters, Mates & Pilots, Local #90, shall maintain and continue to do all work during the Alaska Fishing season that has been done by custom heretofore; such as launch and tugboat captains, tally work, beach boss, winter work in yard and on ships. Mates employed when vessels are laid up shall not be paid less than $7.00 per day.

Section Thirty-Three. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

Section Thirty-Four. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof, the parties hereto have executed this agreement on this ..... day of May, 1940.

THE NATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS OF AMERICA.

.....

.....

.....

.....

National Officer.

President, West Coast Local #90.

Secretary-Treasurer, West Coast Local #90.

ALASKA SALMON INDUSTRY, INC.

By .....

For:

Alaska Packers Association

Alaska Salmon Company

Red Salmon Canning Co.

PACKERS PROPOSAL 1940

Agreement

This Agreement executed this ..... day of May, 1940, by and between ALASKA SALMON INDUS-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

TRY, INC. (for ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPNY, and RED SALMON CANNING CO., each herein referred to as the Company), and SAILORS UNION OF THE PACIFIC,

WITNESSETH:

Section One. If operated, all tug boats, launches and power scows manned by members of the Sailors Union in 1939 shall be manned by members of this organization in 1940. These men shall be shipped out of the offices of the Sailors Union of the Pacific.

Section Two: The wages shall be not less than One Hundred and Thirty Dollars ($130.00) per month.

Section Three. In lieu of all overtime, except as hereinafter provided, deck hands shall receive the following appropriate percentage:

For 1 line Cannery	$10.00 per 1,000 cases
2 line Cannery	5.00 per 1,000 cases
4 line Cannery	2.50 per 1,000 cases
8 line Cannery	1.25 per 1,000 cases

Deckhands shall tally fish as required without payment of overtime.

Section Four. Sailors shall have the right to make their coffee on the tender at all times.

Section Five. When working overtime not less than one (1) hour shall be paid for any fraction of the first hour; one-half (½) hour period to be paid

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

after the first hour has elapsed. The overtime rate shall be One Dollar ($1.00) per hour.

Section Six. When deckhands are called upon to load or discharge barges, regular overtime shall be paid at any time.

Section Seven. No member of the Sailors Union of the Pacific shall be required to go through any picket line established by organized labor, nor shall they be required to work if the vessel or the dock at which the vessel is lying is picketed by organized labor.

Section Eight. Blankets and linen shall be furnished by the Company, and clean linen will be furnished once a week, except on voyages to and from Alaska.

Section Nine. Any work performed such as coaling, fueling, or carrying stores, shall be done if fuel or stores are delivered on the end of the dock, otherwise overtime shall be paid.

Section Ten. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section Eleven. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Twelve. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

SAILORS UNION OF THE PACIFIC

By .....

.....

ALASKA SALMON INDUSTRY, INC.

By .....

For:
Alaska Packers Association
Alaska Salmon Company
Red Salmon Canning Co.

Q. I think you were testifying, Mr. St. Sure, as to what occurred on the 2nd. Is there anything further that occurred other than that on the 2nd of May, 1940? Anything that occurred further than what you mentioned?

A. On the 2nd of May there were meetings, negotiations, with the Marine Engineers; Masters, Mates & Pilots; Firemen; and a further meeting with the representatives of the Alaska Cannery Workers Union. At this meeting on the second with the Alaska Cannery Workers Union there was further discussion concerning the memorandum to be discussed, if

(Testimony of Paul St. Sure.)

any, to cover the operation or to act as a binder for the Cannery Workers in the event there was a Bristol Bay operation. The Union continued to insist that the memorandum, if it was to be executed, should be conditioned upon the 1940 Seattle Agreement alone or that if no agreement was reached there it should be based upon the 1939 San Francisco conditions, even though the workers had already gone out of Seattle upon the memorandum basis that they would operate under the 1939 Seattle if no agreements were reached. The Union Committee, likewise, insisted that we agree that the jurisdiction of the Cannery Workers [144] Union be extended to cover the nurses and that all nurses engaged in San Francisco should be taken from the San Francisco Local; and insisted that negotiations for the Daily men which we requested be conducted separately in San Francisco. They desired to have them continued to be negotiated in Seattle. The result was that no understanding was reached at that meeting, which was in the late afternoon of the 2nd of May, concerning a memorandum agreement. And, on the following day a communication was sent to Alaska Cannery Workers Union summarizing the meeting on the 2nd, which I have just described, and stating the position of the Alaska Salmon Industry in connection with the proposed memorandum.

Mr. Madison: I offer this letter in evidence dated May 3, 1940. I ask that be marked Exhibit CC.

(Received in evidence as Respondent's Exhibit CC.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT CC

May 3, 1940

Alaska Cannery Workers Union
32 Clay St;
San Francisco, California

Gentlemen:

Your committee has advised us that you would give us a statement agreeing to be bound by whatever contract may be negotiated in Seattle for Bristol Bay this year, provided we agree for the San Francisco operators that whatever nurses may be engaged by them this year will be employed through Local Five of the Alaska Cannery Workers Union. Your committee also declined to negotiate here for tallymen even though none of the northern canners employ tallymen from your union.

Your proposal is unsatisfactory for three reasons. First, it does not leave us with any understanding in the event there should be no Seattle agreement with your union. The San Francisco companies have from the start of negotiations taken the position that they must have definite understandings with all organizations before proceeding to outfit expeditions, and your proposal falls short of meeting this condition.

Second, in accordance with your earlier correspondence, we agree with you that where there is a common interest between Seattle and San Francisco operators, all negotiations should be conducted in Seattle. This includes jurisdictional questions as well as other working conditions, and we of course

(Testimony of Paul St. Sure.)

agree that whatever decision may be reached in Seattle as to the nurses will be binding upon the Alaska Packers Association and Red Salmon Canning Co.

Third, we request that negotiations for tallymen be conducted here, inasmuch as Seattle employs no tallymen from your organization.

We repeat that we desire to proceed with plans for Bristol Bay upon the understanding that the 1940 Seattle agreement will be applied, and that in the event no negotiations are concluded there, the 1939 Seattle contract will be applied. This we believe, is the same basis upon which your union in Seattle has released a number of expeditions to Alaska already. As we have also informed you, we must have your reply to this before the close of the day.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By

EHM/CH

Q. Now, Mr. St. Sure, referring back to Exhibit BB, the list of proposals, written proposals, that were discussed, do you recall the date approximately when those were submitted? Did you testify the 27th? 28th?

A. 27th, 28th, 29th, along in that neighborhood; there were letters of transmittal attached to each.

(Testimony of Paul St. Sure.)

I don't seem to have them here, but it was prior to the 1st of May, my recollection being, as refreshed from the date of the letter to the American Communications Association, the 29th of April. I have, however, in my mind the other memoranda were sent out a day or two previously to that.

Q. That is, the 27th, 28th, 29th refers to April, 1940? A. That is right.

Q. Did anything else happen on May 2nd, now, you haven't testified to? A. Not that I recall.

Q. Then, what happened on May 3rd?

A. May 3rd, following the delivery of the letter that has just been marked one addressed to the Alaska Cannery Workers Union Memoranda Proposal we received a reply from Mr. Whaley at about ten minutes to five in the afternoon simply stating in reply to our letter that their position that they had outlined to us on the 2nd of May was their final position. By "they" I mean the Alaska Cannery Workers Union.

Q. That is dated what date? A. May 3rd.

Mr. Madison: I ask that that letter be introduced in evidence and marked Exhibit DD—letter from Whaley to St. Sure dated May 3rd. [145]

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT DD

Alaska Cannery Workers Union
Local No. 5, C. I. O.
George Woolf, President
Karl G. Yoneda, Vice-President
Raymond Aguirre, Secretary
32 Clay Street
San Francisco
Phone EXbrook 4871

Affiliated to
United Cannery, Agricultural Packing & Allied Workers of America
Committee of Industrial Organization
Maritime Federation of the Pacific
San Francisco District Industrial Union Council
International Labor Defense of the United States

May 3, 1940

BY SPECIAL MESSENGER

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Gentlemen:

In answering your communication of May 3rd, we re-iterate our proposal as outlined to you 4:30 p.m. yesterday.

(Testimony of Paul St. Sure.)

We are not in a position to offer any other statement.

Yours very truly,

[Seal] MAURICE WHALEY

M. Whaley, Negotiating Committee Chairman

MW:D
uopwa—34

Received May 3, 1940 4.50 P.M. Messenger boy.

Eat More Canned Salmon—Packed Under Union Conditions
(Union label)

A. Also, on the 3rd of May there were meetings with representatives of the American Communications Association, a meeting with the Committee of the Marine Cooks and Stewards, and a meeting with representatives of the Marine Firemen and, I believe also on that day, we received a copy of the memorandum which is already in evidence under date of May 2nd a memorandum Mr. Cayton sent out to all the unions and, likewise, to the packers containing an outline of the unions position as of that date.

By Referee Roden:

Q. You say that is in evidence?

A. It is already in evidence, I believe, as an Exhibit of the Claimants. Shortly in the afternoon, around one to one-thirty in the afternoon I received

(Testimony of Paul St. Sure.)

a telegram from Mr. Brewer, Chairman of the Maritime Labor Board, Washington, which is similar in tone to the one which was already introduced in evidence by claimants wherein the services of the Mediator of the Maritime Labor Board were offered.

Mr. Madison: I won't introduce that telegram because it is substantially the same as the one Mr. Cayton got.

A. In reply to that a telegram was dispatched to Mr. Brewer stating there was not much time left to solve the questions that were giving us difficulty, but that if the Mediator desired to assist he could assist in the short time remaining, but it was impossible for us to extend the time we had established as the last date upon which or before which it would be necessary to reach an agreement.

Mr. Madison: I ask that this telegram dated May 3rd to Mr. Brewer, signed by Paul St. Sure, be introduced in evidence and marked Exhibit EE.

(Received in evidence as Respondent's Exhibit EE.)

CANNERY CO. EXHIBIT EE

Western Union Telegram

May 3, 1940

To Robert W. Bruere
Chairman Maritime Labor Board
Washington, D. C.

Retel this date deference Alaska Salmon Industry, negotiations public announcement was made last

(Testimony of Paul St. Sure.)

week operations could not be undertaken unless union agreements reached by midnight tonight. Not much time left for attempting to resolve questions but we are still meeting and will continue to do so up to the time announced. If mediator can assist in brief time remaining we will welcome his services but extension of time limit impossible at this late date.

ALASKA SALMON INDUSTRY, INC.
J. PAUL ST. SURE.

Q. Were there any meetings on the 3rd?

A. I have already indicated the meetings we had with the several unions. However, about the time the telegram was received from Mr. Brewer and the reply dispatched to him, which was shortly after noon of the 3rd, Mr. Gertz came to the office of the Alaska Salmon Industry, Inc., and I showed him the reply which I had sent to Mr. Brewer and told him we would be very pleased to have any suggestions or services that he could offer, and after talking with him for a very few moments he stated to me that he was going to leave our office and communicate with Mr. Cayton or with others of the Maritime Federation and endeavor to arrange a meeting [146] for later in the afternoon. My recollection is that later that afternoon, around four o'clock, Mr. Gertz and Mr. Cayton met with Mr. Moore and with me and at that time we reviewed and discussed the negotia-

(Testimony of Paul St. Sure.)

tions that had been in progress. We discussed the demands of the unions which had been received by us and the counter proposals and endeavored to analyze the differences which existed between the unions and the operators. As Mr. Cayton has stated, the statements were made that the principle point of difference was the difficulty in connection with the Fishermens Union and the proposal which had been made, but that there were likewise very substantial differences involving a proposal made and discussed over a period of many days with the Marine Cooks and Stewards Union; and there were other differences including those of jurisdiction as well as those of cost which existed with a number of the other unions. We analyzed or attempted to item by item the contracts and counter proposals as I have stated. I outlined to Mr. Gertz the reason for the establishing of a date before which agreements should be reached and pointed out to him the experience of the previous years that the operators had had under which experience they had invested monies and supplies and equipment and cans and provisioning and preparing for a trip, and actually signing on workers, only to find that some union of the group had last minute demands which delayed the entire expedition under penalty of having to give in to, say, save its loss; and that policy had clearly been determined from the beginning of these negotiations and so stated to the unions we wanted to avoid that method of negotiating.

I pointed out the difficulty we had encountered

(Testimony of Paul St. Sure.)

wherein the Maritime Union Group had originally declined to bargain at all with us for a period of some days or weeks until certain claims had been paid. That we had lost considerable time in attempting to negotiate by reason of that. I discussed with them, also, the particular problems of overtime and conditions which we had encountered in analyzing the unions contracts and payrolls and the comparisons which had been made in connection with the conditions which were in effect out of Seattle, which in each instance were lower than those that were operated or permitted as a basis for operation in San Francisco.

Mr. Gertz endeavored to secure some further discussions with the Marine Cooks and Stewards to the end there might be some compromise made even at the last moment in connection with the differences we had with them. We discussed, I believe generally, the matter of the [147] difficulties we had in arriving at a memorandum agreement with the Alaska Cannery Workers Union; and in general reviewed the situation in its entirety, as I say, step by step and item by item and contract by contract. Mr. Gertz expressed, I believe, at that time his belief that the situation looked pretty hopeless but so far as he was concerned he would endeavor to make some further inquiries and have further discussions and would communicate with us later in the evening. The Fishermens Union, particularly, was meeting that night for a final meeting in connection with a proposal on fish prices. We had a further meeting

(Testimony of Paul St. Sure.)

with Mr. Gertz later that evening. Mr. Cayton was not present at that time. I believe he had been talking with Mr. Gertz in the interim. And again we spent, I think, two hours or more going over the various possibilities of reaching an agreement and discussing particularly the situation which past years had developed whereby the San Francisco operators were no longer competitive with the Seattle operators. They could not operate except at labor costs which would be extremely beyond or higher than those out of Seattle. That that was one of the principle sources of our difficulty and one of the principle reasons for inability to reach an agreement.

Mr. Gertz left the office, as I recall, around ten o'clock at night. We remained there until after the time established as the final time for any possible agreement, midnight. And, as I recall it, about midnight or thereafter we received telephone calls both from the representatives of the Fishermens Union and Marine Cooks and Stewards Union, that there had been a rejection of the agreement finally, and again, by the Fishermens Union and that the other unions, therefore, were not in a position to be able to complete negotiations with us.

That about completes the chronological story of the occurenees up to the 3rd of May, or that night.

Q. Is there anything that occurred after that time which you want to put into the record, Mr. St. Sure? Anything you consider material to this?

A. I don't recall anything that happened following that time.

(Testimony of Paul St Sure.)

There was no further communication and, so far as I know, to this day there has been no further communication with the Alaska Salmon Industry Office whatsoever or with the operators individually from any union. There has been only the information come to us that as the result of the negotiations in Seattle that an agreement was reached, as I have already testified, with the Alaska Cannery Workers Union at Seattle, upon the express condition that that agreement [148] which is rather generally in line with 1939 Seattle contract with some slight modifications that that agreement was reached for Seattle and Portland operations upon the express representation there would be no operation out of San Francisco. That if one was attempted out of San Francisco that a separate contract would have to be negotiated for San Francisco operations.

Referee Roden: That is the statement you made here sometime ago.

A. Yes. I am just repeating that as the last record we had of any direct negotiations.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Cross Examination

By Mr. Resner:

Q. Directing your attention to the last thing you testified to, Mr. St. Sure, and that is the meeting with Mr. Gertz and Mr. Caton on the night of May 3rd, you heard Mr. Cayton's testimony this morning, of course. Do you recall Mr. Cayton's making the statement at that time if he could get over the

(Testimony of Paul St. Sure.)

hump of this fishermens situation there would be no trouble with the other unions?

A. Well, he felt, as he expressed it, we were all thinking out loud, that the major difficulty was between the fishermen and the operators as well as the difficulty between the Marine Cooks and Stewards and the operators. And it was expressed by each of us—Mr. Gertz and Mr. Cayton and myself—that because the other differences seemed to be of so much lesser consequence it was reasonable to suppose if the fishermen would agree and the Marine Cooks and Stewards would agree the others probably would also. There was considerable discussion to that effect. But I don't recall any statement being made by Mr. Cayton as to what the other unions would do. It was simply reasoning out loud. In fact, Mr. Cayton expressed to me, as he did this morning, he had to be very careful in any expressoins he might make that would commit other unions.

Q. He did say if this Fishermens Union situation could be gotten over he didn't think any difficulty would be had with the other unions?

A. He expressed that as his belief.

Q. Do you recall at that time Mr. Gertz made the statement to this effect? That if this Fishermen situation were straightened out that he would recommend to the various San Francisco Unions that they execute the 1939 agreements out of San Francisco?

A. I don't [149] recall his making such a statement. He did have further discussions with the Ma-

(Testimony of Paul St. Sure.)

rine Cooks and Stewards and secured from them a last minute half-way suggestion. By half-way I don't mean disparagingly, but I mean lightly half-way on certain of the overtime proposals we had. He received that by phone on the evening of the night of the 3rd of May and we were still rather far on that despite his intervention in the last few hours on that situation. It wouldn't be consistent in my mind in view of the attitude expressed by the Marine Cooks and Stewards for him to have made the expression he would make the 1939 agreements. He might recommend them, but he expressed as in the Marine Cooks and Stewards, he would not execute the 1939 agreement.

Q. Well, let's leave the Marine Cooks and Stewards and Fishermen out of this thing excepting what you have just stated here as a fact, if those situations could be straightened out didn't he say he would recommend to the various other unions concerned, including the Alaska Cannery Workers Union, the signing on from San Francisco for operation on the basis of the 1939 San Francisco agreements?

A. Well, I don't recall his making that statement. As to most of the other unions concerned, I think that we were not very far apart in the connection with the 1939 terms, with the exception of the Cannery Workers Union. Our opinion has been they should sign a memorandum agreement agreeing to be bound with Seattle 1940 or Seattle 1939; and they have insisted upon San Francisco 1939, which we had indicated was not acceptable.

(Testimony of Paul St. Sure.)

Q. In other words, this whole matter can be summed up in that simply this union wanted the minimum of 1939 San Francisco agreement and the operators didn't want to give it?

A. No, I would say that wasn't quite as simple as that. The unions request to us were for increases over San Francisco 1939 ranging from three to, I think, some 9%, depending upon the various contracts that were submitted. We, in turn, said not only could we grant no increases in wages and operating costs, but that we would have to find, if possible, some means of reducing the labor costs, which meant we wanted reductions, at least, into some of the unions. Apart from that, however, there were many and not inconsequential demands for changes in conditions and clarifications which had to do directly with method of operation, upon which we were far from agreement; although, I agree that they were of less consequence to us than the matter of actual out of pocket dollar cost that went out of payroll. However, they were matters of consideration and the sole difference, therefore, [150] was not the question of dollar costs alone.

Q. Let me put the question this way. Did the operators ever offer to reexecute for 1940 the 1939 contract for the Alaska Cannery Workers Union of San Francisco? A. No.

Q. On the other hand, did the union negotiators on more than one occasion offer to the packers to make the expedition this year out of San Francisco on the basis of San Francisco 1939 agreements?

(Testimony of Paul St. Sure.)

A. No. The situation was this. Prior to April 1st the Cannery Workers Union submitted to us a contract which was in excess of our 1939 San Francisco contract. On April 1st they withdrew their negotiations from San Francisco entirely and took them to Seattle. The only offer that they made to us was at the very end of the road on the first, second, and third of May, 1940, wherein they said that they would take either Seattle 1940 or San Francisco 1939, whichever were the better, which was a direct violation of the understanding we believed we had with them for a uniform contract out of San Francisco, Seattle, and Portland, 1940.

Q. They would not go out of San Francisco for less than 1939 San Francisco agreements?

A. They would not, until the final day or two's discussion that I mentioned; and then only if you can draw the inference. They would not accept, rather, a Seattle contract, which was less than San Francisco, in any event. They said to us they would take whichever gave them the greater benefit, which was not the basis of negotiations as we understood. They caused the negotiations to be removed from San Francisco to Seattle.

Q. Well, in any event, it was clear from that that the minimum the union wanted out of San Francisco was the 1939 San Francisco Agreement?

A. At that time it was, yes, sir.

Q. I want to draw your attention to the letter of April 3rd, which is in evidence as Canners Exhibit I. In that letter, referring to page 5, you list

(Testimony of Paul St. Sure.)

your proposals to the various unions and you list your proposal No. 2 addressed to the Alaska Fishermens Union wherein you state, "For Central Alaska operations the 1939 agreements will be renewed provided that modifications heretofore negotiated shall be reduced to writing and included in the agreement; and provided, further, that the provision for penalty of $75.00 if the men leave be eliminated. It is understood, further, floating equipment shall be handled both on and off Chignik—that proposal, of course, you were [151] only making an offer to the Fishermen for Central Alaska. This has nothing to do with Bristol Bay.? A. That is correct.

Q. Now, with respect to Bristol Bay Operations Packers Proposed: Reduction in wages, over the price of fish in 1939, did they not?

A. That is correct.

Q. Can you tell us what that reduction amounted to? How much?

A. Two and a quarters cents a fish.

Q. That is last year. The price of fish was what in 1939?

A. Fourteen and a quarter—and, I believe, the proposal was twelve.

Q. And the proposal this year was twelve cents?

A. Correct.

Q. Now, the agreement that ultimately has been reached in Seattle between the Alaska Fishermens Union and the packers was reached on the basis of the 1939 price, was it not?

A. I understand it was, yes.

(Testimony of Paul St. Sure.)

Q. In other words, the Chignik and Karluk fishermen got what they wanted and the Canners gave the fishermen what they asked for with respect to fish prices this year?

A. With respect to fish price, yes.

Q. I want to draw your attention for a moment, now, to the operation of the Alaska Salmon Company. I believe in your direct testimony you stated the Alaska Salmon operated only at Bristol Bay?

A. Correct.

Q. In other words, they have no operations in Central or Southeast Alaska, either Chignik or Karluk? A. That is correct.

Q. Isn't it a fact, Mr. St. Sure, that the agreement for the Bristol Bay operation is generally reached sometime in May of each year between the Packers and the Unions?

A. I couldn't testify as to this. I don't know.

Q. Directing your attention to the question of the curtailed season, isn't it a fact that one of the reasons why the operators were asking for the reduction in the contract agreement, that is, with respect to wage scales and other matters which might have increased the operating cost for this year, is due to the fact this is a curtailed season in Alaska?

A. Well, there was considerable difference of opinion just as Mr. Vegen expressed both opinions —supposed to be a light season. The fact that the season was to be curtailed did, I feel, influence the packers in taking a closer look at their costs, and when they made the analysis they found they were

(Testimony of Paul St. Sure.)

losing about fifty cents a case on the fish they packed under present operating costs. I suppose the additional hazard of having a short catch might have influenced them in their reason, but not to the extent they didn't want to go fishing. [152] They wanted to try on a chance that would give them a chance of breaking even on a hazardous business.

Q. So, fishing is a hazardous business even in Alaska as every place else?

A. So I have learned.

Q. But, with respect to the negotiations with the Alaska Cannery Workers Union, your negotiations here in San Francisco were predicated upon the fact that the costs had to be reduced below what was paid this union out of San Francisco if there was going to be any season at all?

A. Now, as to the Cannery Workers Union we were satisfied, I take it, both from the course that was followed by us as well as by the discussions I had with the Packers to take our chances on having at least no worse a deal than they got out of Seattle.

Q. The Alaska Cannery Workers never declared any strike against the operators, so far as you know?

A. Not that I know of. There was no operation to be struck.

Q. No operation to be struck, in other words. And, directing your attention to the operation in Central Alaska this year prior to the time when this season opens, I think it is around the middle of April, is it not, that ordinarily it would have opened? That is, your operation in Central Alaska?

(Testimony of Paul St. Sure.)

A. There would have been sailings.

Q. Sailings would have been around the middle of April. In any event, prior to that time you had no workers employed in any of your plants in Central Alaska?

A. Not to my knowledge. There may have been watchmen or some others there, but I am taking it by ear. I don't know as to that.

Q. And the same is true with regard to the Bristol Bay operation? A. I assume so.

Q. Mr. Resner: Can I have about five minutes, Mr. Referee, to check these letters?

(At 3:50 p.m. a five minute recess was taken.)

By Mr. Resner:

Q. Mr. St. Sure, directing your attention to this question of wage claims, you testified that one of the first things the union asked before they entered into negotiations for a contract was last years wage claims be settled. Can you tell us what that is?

A. Well, there were a number of claims involving —I say a number, there were several, I don't recall how many—six or eight, perhaps, involving several [153] unions having to do with disputes over time or questions of interpretation of contract, that his men were paid at one rate and they claim were entitled to work at another rate. There were claims over that, largely claims of spite, disputed overtime. I believe they all were with the exception some of the Alaska Salmon were not settled.

Q. Now, this question of wage claims being discussed this year before the contracts were negotiated

(Testimony of Paul St. Sure.)

is not anything unusual in this industry, is it? The same happened last year did it not?

A. I had nothing to do with it last year, so I can't state. I don't know.

Q. Do you know anything about whether or not the Alaska Packers are operating their traps this year in Central Alaska?

A. That I can't state. I don't know.

Q. You identified a letter, which is the Packers Number C, from the union, dated November 8, 1939, and addressed to Mr. Tichenor, advising the Alaska Packers that Local No. 5, Alaska Cannery Workers Union, had been designated by N.L.R.B. as the bargaining unit and was ready to negotiate. Do you know whether a reply had been had by the Alaska Packers Union? A. I do not, no.

Q. Directing your attention to the Bristol Bay operations you testified that it was your impression that out of Seattle the wages were less to the workers than they were out of San Francisco. Now, is your impression that that applies to the Alaska Cannery Workers Union out of San Francisco?

A. It does. I would like to correct or, rather, amplify that answer by stating that my understanding is that the basic rates insofar as cannery workers wages are concerned are comparable or about the same, but that the difference in the cost of operations out of San Francisco as against Seattle, the costs out of San Francisco being higher, have to do with the Culinary Department which is handled by and manned by the Alaska Cannery Workers, and that

(Testimony of Paul St. Sure.)

the differences in both conditions, as to number of men required to be employed and amount of overtime required in a contract and general resulting costs, is higher out of San Francisco than it is out of Seattle. I am referring to Bristol Bay now.

Q. Yes. But the wage scale for the Cannery Workers, both AB and B classifications out of San Francisco and out of Seattle is the same?

A. I believe that is correct. The comparison of contracts will show that, but I believe that is correct.

Q. You made some comment on your direct examination to the matter [154] of nurses, watchmen, and similar classifications which they Alaska Cannery Workers Union, Local 5, was demanding jurisdiction for?

A. I think I mentioned particularly nurses. The watchmen I mentioned in connection with the sailors union and fishermens union. My recollection is the Cannery Workers specifically discussed with us nurses, orderlies, and embalmers, I believe. I don't recall we executed it. In fact, I remember stating to the Cannery Workers Committee if they represented those people and those people were members of their union so far as I was concerned that was the end of the matter; however, the discussion that occurred in connection with that was that the entire negotiations be moved to Seattle, and the only discussions we had were when late in the game, along the forepart of May, the union requested specific agreements be reached for nurses. We felt it

(Testimony of Paul St. Sure.)

should all be Seattle or none, although we then asked Daily men be here.

Q. But so far as your negotiations with the Alaska Cannery Workers Union were concerned the question of who represented these nurses, watchmen, and so forth, never was a stumbling block to your arriving at an agreement?

A. Only insofar as I mentioned, the question of where the contract was to be negotiated, which might be over them. It was not a question of who claimed them or who they were affiliated with.

Q. In other words, the negotiations were transferred to Seattle, but the Packers recognized this local represented these workers, these classifications?

A. I have no reason to question it insofar as I was concerned. If the claim was made these people belonged to the Cannery Workers Union that was no business of ours. They could belong to what they pleased.

Q. The only point I want is that was never a stumbling block or anything preventing agreements from being consummated for the current season?

A. Only so far as it came in the picture when we endeavored to secure this memorandum agreement covering operations out of San Francisco. When we asked for Seattle 1940 or Seattle 1939 the union wanted something else. They wanted Seattle 1940 or San Francisco 1939 and also——

Q. (Interrupting) Depending on which was the better contract for the union?

A. Yes. Also requested that we specifically rec-

(Testimony of Paul St. Sure.)

ognize their jurisdiction over the nurses, as I remember, and agree they be covered by the contract. Our position was that was a matter to be negotiated in Seattle, but we didn't either reject or accept that claim of [155] jurisdiction; although, previously, I had stated to the union although so far as we were concerned the question of representation was up to the employe.

Q. And that was transferred to Seattle for negotiations?

A. I assume it was transferred long before, and I assume it was settled in whatever contract they reached up there. In any event, it didn't affect us because there was this proviso in the final settlemen, of the settlement I referred to before, if we had operations out of here we would still have to negotiate a contract out of San Francisco.

Mr. Resner: I want to offer at this time. I don't think it will be necessary to put Mr. Woolf on the stand or any of your people, because it is admitted, a letter to which the union sent to all three of the member concerns of the Alaska Salmon Industry that they represented these particular classifications, and were so certified before the Labor Board.

A. I don't recall seeing such a letter.

Q. It was sent in January.

A. I know of no discussion had concerning it, except what I mentioned to you.

Mr. Madison: I don't think the letter is relevant.

Mr. Resner: I only offer them because of the fact

(Testimony of Paul St. Sure.)

I want to clear up any inference drawn from any testimony the question of who represented these workers had anything to do with the inability or failure to arrive at agreements for the 1940 season.

Mr. Madison: That letter wouldn't have any application to that. It is just a statement. You want to prove they were certified. Why don't you produce the certification?

Referee Roden: Is there any contest on the proposition whether or not the Cannery Workers Union was authorized to be the bargaining agency?

Mr. Madison: Absolutely none, so far as I am concerned.

Mr. Resner: So far as that is concerned, then, we won't have to have those letters go in.

Mr. Madison: I just don't know whether they are or not.

Examination by Mr. Resner:

Q. Well, then, after the wage negotiations were transferred to Seattle the Union continued to negotiate here with you for Manning Scales and other matters having to do with the operations out of San Francisco?

A. Manning Scales and the physical set-up—porters, and so forth, supplies, hospital requisitions, and so forth—on matters which had to do with the physical equipment and supplies [156] and Manning Scales.

Q. Well then, Mr. St. Sure, in connection with all these negotiations with the Alaska Cannery Workers Union of San Francisco they had at all

(Testimony of Paul St. Sure.)

times stated they were ready, willing, and able to go and wanted to go to Alaska this season, did they not, on the basis of at least the 1939 San Francisco Agreement.

A. I don't know quite how to answer that. They stated they wanted to go on the basis of agreements that was to be negotiated in Seattle. They stated they wanted that agreement to be as we said we wanted it to be, coastwide in application so there would not be any unfair or undue advantage or disadvantage to any operator. We particularly wanted that because attempts had been made the previous year, I understand, to have the same thing without success. We then felt that we had to have an agreement with the Cannery Workers Union whereby there would be a coastwise agreement negotiated in Seattle, and we came up to the point of endeavoring to get the Local Union No. 5 to affirm it. We found that they were unwilling to affirm it except upon terms they would dictate, which was despite what Seattle might negotiate they still wanted San Francisco negotiations if they were higher based upon 1939; and, in view of the fact the previous year there had been a similar agreement to go on coastwise basis, which was repudiated by the San Francisco operators we didn't feel they were offering anything *exept* failure to reach agreements they had previously agreed to go along on.

Q. In other words, though, it was always clear to you they wanted at least what they had last year?

(Testimony of Paul St. Sure.)

A. As I say, that was made very clear to us in the last few days of negotiations . . .

Q. And on that basis—I didn't mean to interrupt you. Pardon me!

A. I say, when for the first time we found they were not willing apparently, to go along on coastwise agreements negotiated in Seattle but wanted to do the same sort of thing that had been done the year before, go up to the point of agreeing to a coastwise agreement and then endeavor to again put San Francisco in the position of being higher than the other operators.

Q. But it was always clear to you, was it not, they would go and wanted to go on at least the 1939 San Francisco agreement?

A. It was so indicated at the end of the road with this excepion. They said "We will go on San Francisco 1939 unless Seattle gives us better than San Francisco 1939, in which event we will take the better of the two. That is the final position. [157]

Q. Of course, that position was made known to you before your final deadline?

A. Yes, the last day or two—3rd of May, I believe, we had a letter stating, "that is our final position", on the day of the deadline.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. May I ask a question? Mr. St. Sure, you are testifying here under direct examination in regard to your negotiations you conducted with the Union;

(Testimony of Paul St. Sure.)

I think, the period of those negotiations ran from sometime in March and down to sometime in about May 3rd. Now, during that period did you have meetings from time to time with the people that you represented? With the executives of the three canning companies whose names have come up here?

A. Practically daily, both before the 1st meetings with the Unions on the 7th of March and with the Maritime Federation and until and after the 3rd of May I met, Mr. Moore with me, with the executives or executive offers of the Alaska Packers Association—Mr. Barthold, Mr. Alvin Varthold, and Mr. Tichenor, and with Mr. Peterson of the Red Salmon Canning Company, and Mr. Fleager of the Alaska Salmon Company, and others in that organization.

Q. And now with reference particularly to the claim made here that these negotiations were not bonafide, that these canners never intended to go, and these negotiations were simply, if I may use the expression, "window dressing". What, generally speaking, occurred at these various meetings with regard to their willingness or wish to go to Alaska this year?

A. The discussions which were frequently had turned to the question of what the result would be of failure of negotiations; and each of the operators, with the exception of the Alaska Salmon people, after or about the time they finally announced they would have to abandon their opera-

(Testimony of Paul St. Sure.)

tion because of the difficulties they would have had expressed a desire to go fishing and endeavor to make an expedition for the reason they had monies invested in plants, boats, and equipment, which would be a total loss to them in the event they were not able to go fishing. A matter of discussing of the possibility of chartering ships was gone into, and in each instance the ships that were required for the operations of Central Alaska as well as operations for Bristol Bay were actually withheld from charters which were available at that time. In other words, that they might be available to go fishing with the resultant loss to the [158] companies of salvage, at least, of many thousands of dollars; which so far as I know, to this day they have never attempted to secure because they wanted the ships available for the purpose of completing the expeditions and going fishing this season.

Q. Did you discuss with them in respect to these letters that were written? I think the first was dated April 3rd and the second one with regard to the Bristol Bay operation sometime later. *In* April 26th in discussing the sending of those letters did you have talks with them in regard to why it was necessary to send those letters at that time with respect to the purchases they had to make? With materials and plans they had to make if the expedition was to sail?

A. Yes. Those matters were discussed on many occasions. The question was first raised, I believe, in discussions as to how we could avoid the past

(Testimony of Paul St. Sure.)

practices I understood had occurred, having as I have mentioned, these last minute demands made—that is, after ships had been outfitted and after equipment had been purchased and after some of the men had actually been signed on one or the other of the unions would come up and demand for additional men to go on board or for additional wages or additional conditions. The previous season, I believe, there was actually a strike at the yard of the Alaska Packers which held up their getting away; and, I think there were other strike actions or last minute demands which delayed sailings to later than safely the ships could get away. In order to avoid that, as we indicated in our first letters to the union, we were going to endeavor to reach union agreements prior to the times complete commitments were made for purchase of supplies and outfitting of this expedition so we wouldn't have a loss in the event these agreements weren't finally consummated; and an announcement was made, without allowance for storm or accident, which would allow us to get away the last possible day from San Francisco without allowing a safety factor to make and complete the expeditions to Central Alaska. A limited number of days was allowed for the provisioning of the ships and equipping them and the purchase of supplies, perhaps less than the time in accordance to the operators statements to me than safely could be allowed, with the idea we would have everything completed in the way of agreements before we would risk further

(Testimony of Paul St. Sure.)

investment for the outlay of these supplies, and so on, in connection with the Central Alaska operation. That was worked out on that basis. And in connection with the Bristol Bay operation that [159] was the same formula and procedure. Indeed, I recall Mr. Peterson of the Red Salmon Company felt the date of May 3rd set for Bristol Bay operations was not a safe date; that it was too late. And he felt that the 1st of May should be the last possible date upon which they safely could undertake to complete preparations for the operations of Bristol Bay.

Previous years experiences, as I say, were reviewed. However, the concensus of the two operators then concerned with Bristol Bay—Alaska Packers and Red Salmon—was in view of the fact the Fishermens Union did not meet on the last possible meeting they could have to consider this proposal until the 3rd of May, they having once considered it and rejected it, the deadline should be extended to the 3rd of May, midnight, so they could have this last meeting in order to finally consider the proposal made without the acceptance of which there could not be operations at Bristol Bay. So, in each instance, dates were set solely upon the basis of establishing a time beyond which it was not safe to plan to complete the investments and preparations of the expedition and dates before which it was necessary agreements be reached with the unions if we were to avoid the

(Testimony of Paul St. Sure.)

same type of last minute worse demands that had been experienced the previous season.

Q. Was anything said at any of these meetings you had with the packers that would indicate or imply in any way these negotiations were not bona-fide? A. There was none.

Q. Was there anything to indicate that so far as the Alaska Packers Association was concerned or the Red Salmon Canning Company was concerned or the Alaska Salmon Company prior to the date with regard to them that you have mentioned that they did not intend to go fishing and would go fishing and could go to Alaska with an expedition from San Francisco in the event a proper labor arrangement could be made with the unions involved?

A. Every evidence that I had in addition to the statements that the operators, themselves, made to me which, I believed, indicated a desire to go fishing and, indeed, had made partial preparations to complete their expeditions. There were some monies expended, equipment purchased, nets bought, cans purchased. There were some supplies and machinery purchased beyond that in preparation for the season of 1940, and those expenditures amounted to many thousands of dollars, in anticipation of an actual operation in 1940. [160] The ships in addition that I have mentioned that were to be used for those expeditions were not chartered, although attractive charters were available.

Mr. Madison: That is all.

(Testimony of Paul St. Sure.)

Recross Examination

By Mr. Resner:

Q. Mr. St. Sure, referring to this statement a moment ago that last minute coercive demands had been made by the union, no such demands were made this season, were they?

A. For the reason that I feel the operators took the position they would not attempt to complete their preparations for expeditions until there had been a commitment reached; therefore, no opportunity for such demands to be made alongside the ships, because the ships weren't prepared for sailing.

Q. But, in any event, the operators had known for a long long time what the unions would sign for? That is, Local 5 of the Alaska Cannery Workers Union?

A. As I said, they come in on the 3rd or 2nd of May. It was, the day of the time we had set as the last safe date for making preparations.

Q. They renewed the original demands as being the most they wanted?

A. We knew they had requested an increase over 1939 conditions and we felt the 1939 conditions were already so excessive we wouldn't operate at a profit.

Q. But in any event, when that 1939 agreement was presented to you you knew that was the most the unions wanted?

A. We knew that was what they wanted at that time, yes, sir.

(Testimony of Paul St. Sure.)

Q. And that was, oh, five or six weeks prior to the Bristol Bay expeditions old starting date, was it not?

A. I would say it was approximately a month before. The 27th of March, as I remember it, is when the demand was presented to us, and withdrawn on the 1st of April.

Mr. Resner: That is all.

Examination

By Referee Roden:

Q. Mr. St. Sure, why did the Alaska Salmon Company quit?

A. You missed the statement made to me. They had financial problems which didn't permit them to make the arrangements financially for outfitting for Alaska for 1940. They had financial troubles, among which were the fact that the operations the previous season had been a loss and a contributing factor in that they believed the excessive labor costs plus their own financial difficulties made it unwise for [161] them to attempt operations.

Q. It wasn't due to labor difficulties?

A. Except in the sense I mention. That was one incident, one factor only.

Q. Now, are you acquainted with the conditions of the Salmon market at the time these negotiations took place around about on the middle of April, or thereabouts?

A. I am not, sir. I prefer one of the Alaska operators testify to that. I think they are better

(Testimony of Paul St. Sure.)

qualified, and I haven't the information except by ear.

Referee Roden: Any further questions, Mr. Resner?

Mr. Resner: None for me.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Mr. Resner: I want to ask you this, Mr. Madison, will you call Mr. Fleager?

Mr. Madison: He won't add anything to my case. Do you want to call him?

Mr. Resner: The only point I wanted to bring out from Mr. Fleager was the letter wherein it is indicated, at least in my construction of these letters, Alaska Salmon had other reasons for not going fishing than any labor difficulties. You will so stipulate to that?

Mr. Madison: I will stipulate to what Mr. St. Sure said. Or, if you want to make any broader stipulation write it out and let us take a look at it?

(Remarks were made off the record.)

Mr. Oliver: On these two lists of persons supposed to be employes of Alaska Salmon Company in 1939 it was admitted solely for the purpose, I think, of indicating their records show these members were employes. It was admitted. I said I wanted the opportunity to check it. Now, it has been checked with respect to the long list upon which there are 250 names. I find that one man has since died, he being No. 245 on the list, Richard

Throll. That No. 207 had no earnings from us. He apparently spent his whole time in Alaska in Jail. No. 230, who is J. Varela, does not appear on our payroll. And No. 107, Joe Rendon does not appear on our payroll. [162]

We have three Rendons, I believe, on this list.

Then, on the shorter list entitled Woodriver Personnel of 1939 Season, No. 14, Charles Roth Wyler worked for the Company in San Francisco prior to going to Alaska, and he worked for the Company in San Francisco upon his return from Alaska and he worked sometime in September, 1939; and since that date he has worked elsewhere in San Francisco or California. No. 34, Mike Martin, has, likewise, been employed in California since the end of the 1939 season. Otherwise, the list checks with our payroll, except for some minor errors, apparently in spelling.

Mr. Resner: So far as No. 14, Charles Roth Wyler, and also Mike Martin, No. 34, the point you are making is that they weren't employed by you in Alaska but they also worked in California after they returned from Alaska?

Mr. Oliver: Yes, Charles for us and Mike Martin for somebody else.

Mr. Resner: They didn't work during April of this year or May this year?

Mr. Oliver: Not for us. I do not know whether they are working for someone else. My understanding is they are working for someone else.

Mr. Resner: But they are not working for Alaska Salmon?

Mr. Oliver: No, they are not.

Mr. Resner: Of course, they wouldn't be eligible for benefits if they are working now under any circumstances.

(At 4:30 p.m. the hearing was adjourned to reconvene Wednesday, 9:00 a.m., June 19, 1940.)

EXHIBITS

Statement

Mr. Resner: Let the record show that Exhibit No. 1 is changed and the following appears as Exhibit No. 1: The letter from Anderson and Resner signed by George R. Anderson, May 11, 1940, addressed to the Alaska Unemployment Compensation Commission, regarding the claim of Frank L. Aragon, Social Security No. 571-09-8139, which is presently Exhibit No. 5. That is changed to No. 1. And, also No. 5, the letter to the Alaska Unemployment Compensation Commission [163] of May 14, 1940, signed by Sam Young, Secretary of Alaska Cannery Workers Union—that is changed to No. 1.

Let the record show further that the list of Claimants numbered 1 appears as follows: Sheet 1 begins with the name Sing Tom, No. 567-16-7833; Sheet 2 first name is Clarence Davis, No. 566-03-1697; Sheet 3 first name is Chan D. Tsue, Social Security No. 561-05-8489; Sheet 4 first name is John Harris, No. 566-12-5381; the first name on Sheet 5 is Tiburcio Y. Vios, No. 566-16-1781; Sheet

6 first name is Yen Shoo, No. 571-01-6641; Sheet 7 is Joe Corry, Social Security No. 572-03-0323; Sheet 8 first name is Frederick Cordova, No. 566-14-6010; Sheet 9 first name is Toshizo Asari, No. 547-03-2338; Sheet 10 first name is Chi Saw, No. 566-16-7832; Sheet 11, Maximo Lucerna, No. 566-05-0556; Sheet 12 first name is Wilbur Burton, No. 566-01-2044. All of those, then, become Claimant's Exhibit No. 1. And in this regard, Mr. Examiner, I would like to have this case entitled Frank L. Aragon, and all the other Claimants whose names appear on the sheets; and, also, the Alaska Cannery Workers Union No. 5 of San Francisco on behalf of these Claimants.

Then Exhibit No. 2, Claimants Exhibit No. 2, which was formerly No. 1, is changed to No. 2; and it is the letter from the Alaska Salmon Company of April 30, 1940, signed by Mr. Fleager, to the Alaska Cannery Workers Union. (Indicating.)

And I am making former Claimant's Exhibit No. 14 Exhibit No. 2 (a), being the list of employes of Alaska Salmon Company during 1939; and there are three sheets to this 2 (a)—the first one, Sheet No. 1, carries the first name Vincente Rendon; Sheet 2 the first name is Manuel Molix; and Sheet 3 the first name is Albert Sanchez. In other words, there is no longer any No. 14. No. 14 has become 2 (a).

All the others remain the same. [164]

Wednesday Morning Session

(At 9:00 a.m., June 19, 1940, the hearing was reconvened by Referee Henry Roden.)

AUSTIN K. TICHENOR,

The Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. Mr. Tichenor, you are an officer of the Alaska Packers Association, are you not?

A. I am.

Q. What office?

A. Vice-President and General Manager.

Q. And you have held this office for sometime past? A. I have.

Q. And you are the man, the executive of the organization, most familiar with the expedition that yearly takes place to Alaska? Or has for a number of years past up to this year?

A. I am.

Q. Now, Mr. Tichenor, you are the man representing the Alaska Packers Association who Mr. St. Sure referred yesterday to in his testimony?

A. I am.

Q. And you were in during the season over negotiations from sometime in March until sometime in May? You were the representative of the Alaska Packers Association with whom Mr. St. Sure conferred with regard to his negotiations with the union in connection with the trip to Seattle? Is that correct? A. I was.

Q. Now, Mr. Tichenor, did the Alaska Packers Association at that time make provision for and did it intend to go in 1940 to Alaska?

(Testimony of Austin K. Tichenor.)

A. We did.

Q. And referring specifically to the earlier trip, the Chignik and Karluk trip, what steps were taken to prepare for the expedition and for the operation of the canneries in Alaska generally?

A. We set aside a vessel for that purpose, our fastest vessel that was capable of making that trip.

Q. Which vessel was that?

A. The Steamer Cherakoff. We also purchased supplies and outfitted to the extent of nearly four hundred thousand dollars. Those supplies are still on hand in our warehouse here open for inspection, if anybody desires to see them.

Q. What are the nature of the supplies?

A. Cans, can ends, lumber, fiber boxes, caterpillar engines, stationary engines, and various machine tools, and so forth, that we might have difficulty in getting, or there might be some delay in getting. [165]

Q. Now, in connection with preparing for an opertion of this character is it correct to say that certain of the materials and supplies have to be purchased sometime ahead because of the difficulty of getting them, while others particularly perishables, particularly food, can be purchased within ten to fifteen days before sailing?

A. That is very true.

Q. Now, you spoke about cans and can ends. You bought those in considerable quantity for the operation this year? Is that correct?

(Testimony of Austin K. Tichenor.)

A. That is correct.

Q. And that material is on hand here in San Francisco Bay Area? A. It is.

Q. And in addition to that I assume that the Company has a certain amount of canned material in Alaska which could be used to augment the materials which are here, if you had had an expedition this year?

A. We have, both in Central Alaska and Bristol Bay also.

Q. Did you purchase any piling this year for use in connection with your fish traps?

A. We did.

Q. And did you purchase that in substantial quantities?

A. Yes, quite substantial quantities.

Q. Did you purchase lead for nets for this year?

A. We purchased lead and purchased linen nets.

Q. Did you purchase some Clark Truck Tractors? A. We did.

Q. And those were purchased for use in Alaska?

A. They were purchased for use in Alaska and are on hand here now.

Q. And aren't usable in your business in any other way except in connection with your Alaska Fishing Trip? A. That is all.

Q. When were those purchased, if you can recall?

A. They were purchased—the tractors were purchased, I imagine, in late March.

Q. In late March of 1940?

(Testimony of Austin K. Tichenor.)

A. 1940, yes.

Q. Did you purchase motors for can lines and switch boards, and so forth?

A. We did. We purchased what they call all the runways that connects up with modern cannery machines.

Q. And those were purchased in 1940 shortly prior to the time you would have gone on your trip if you could have gone?

A. They were, yes.

Q. Did you purchase boxes, shooks?

A. Yes, we ordered box shooks, but we didn't take delivery on them.

Q. You were able to cancel the order when you found you couldn't go? A. Yes. [166]

Q. Did you purchase lumber?

A. We did, and lumber is now on hand in our shipyard in Alameda and some of the various lumber yards we didn't take delivery on but have had to pay for just the same.

Q. Now, I think you spoke you had taken nets and, I assume, nets would include linen and cotton webbing?

A. It would include linen Gill nets for Bristol Bay and all the cotton webbing necessary for hanging traps in Central Alaska.

Q. And those were purchased this year with the idea of going to Alaska? A. This year.

Q. Did you purchase a fish scow?

A. We had a scow built on Puget Sound for Chignik, yes.

(Testimony of Austin K. Tichenor.)

Q. To be used in the operations of 1940?

A. Yes.

Q. Did you purchase some laundry machinery?

A. Yes, quite a lot of laundry machinery to be installed in the different laundries asked for by the various unions. And it had been purchased and we have it on hand.

Q. That was purchased in 1940, was it, for use in connection with the 1940 operations?

A. That was purchased in the Spring of 1940.

Q. Did you purchase donkey boilers?

A. Yes, we purchased a couple of them.

Q. For use in the 1940 operations?

A. Yes.

Q. Did you purchase a winch from the Robbinson Engineering Company? A. Yes.

Referee Roden: Have you a list of those items, Mr. Madison?

Mr. Madison: I will ask this question.

Q. Did you purchase winches from the Robinson Engineering Company? A. Yes.

Q. Did you purchase five caterpillars? And did you purchase a substantial quantity of fuel oil? And Rope? And quantities of blankets from the Utah Woolen Mills? In the Spring of 1940? And all also for the use of the expedition of 1940 if you could have gone? A. Yes, we did.

Q. And those materials are on hand and available for anybody to examine who wishes to?

A. They are.

Q. Now, Mr. Tichenor, you spoke of having one

(Testimony of Austin K. Tichenor.)

vessel ready and available to go, the fastest vessel ready and available to go to Central Alaska, is that correct? A. Tht is correct. [167]

Q. Did you have vessels available to go to the Bristol Bay operation?

A. We had two others available for Bristol Bay.

Q. And were the vessels which you had available ample to carry your men and cargo to conduct the operations in Alaska this year?

A. They were very ample.

Q. Did you charter other vessels of your fleet which you have used in the past for past expeditions to Seattle?

A. Did we charter additional?

Q. Other vessels that you have used in the past? I withdraw the question and ask you this question. Which vessels did you have available to go to Bristol Bay?

A. We had the Etolin, the Qekvichak, and Cherakoff on her return voyage from Central Alaska.

Q. In other words, your plan was to send the Cherakoff to Central Alaska and then to have her come back, and then she could go to Bristol Bay and carry additional cargo to help in that operation? A. That was our idea, yes.

Q. And you have two other major vessels in your fleet, do you not?

A. Yes, the Bearing and Delaroff, are vessels

(Testimony of Austin K. Tichenor.)

which have gone to Alaska in prior years?

A. They have, yes.

Q. And these vessels were chartered when?

A. They were chartered in early Spring, January and February, chartered out January and February of 1940.

Q. And by virtue of these charters they would not have been available to go to Alaska?

A. They would not have been available. We didn't figure on sending them to Alaska.

Q. And vessels you had remaining in your fleet, large and small, I think you have already testified to, were ample for the operation in Alaska?

A. They were ample, yes.

Q. Now, I want to introduce for the purpose of the record a list of the sailing dates of the Alaska Packers Association expeditions to Alaska in 1937, 1938, and 1939. I will show this first to Counsel.

Mr. Resner: These dates, Mr. Madison, you refer to are the days of different sailings to Bristol Bay? Three sailings to Bristol Bay, three different vessels?

Mr. Madison: That is my understanding. You can ask the witness that. [168]

I am just offering this, if your honor please, for the purpose of the background.

Referee Roden: What was the last Exhibit? BB, was it?

Mr. Madison: Double-E was the last one.

It will be Double-F, I think. (Indicating.)

(Testimony of Austin K. Tichenor.)

I think I better lay a slight foundation and ask the witness if this is a true and correct statement?

By Mr. Madison:

Q. Let me ask you, Mr. Tichenor if this Exhibit marked for identification Canners Exhibit FF is a true and correct copy of the sailing dates upon which the Alaska Packers Association sent expeditions to Alaska to the states mentioned during years 1937, 1938, and 1939? A. It is, yes.

Q. Showing dates sailed up, dates arrived up, dates sailed down, and dates they arrived at—that is correct, is it not?

A. That is correct.

Q. I ask this be introduced as Canners Exhibit FF.

(Received in evidence as Respondent's Exhibit FF.)

RESPONDENT'S EXHIBIT FF

SAILING AND ARRIVAL DATES—ALASKA PACKERS ASSOCIATION'S EXPEDITIONS TO ALASKA—1937, 1938, 1939

Year	Stations	Sailed Up	Arrived Up	Sailed Down	Arrived Down
1939	Karluk	April 23	April 30	September 3	September 10
	Chignik	April 23	May 2	September 23	September 29
	Bristol Bay	May 25, 26, 31	June 3, 4, 8	(July 30,	Aug. 6, 12, 14, 17
				(Aug. 3, 6, 9	
1938	Karluk	May 30	June 6	Sept. 19	Sept. 26
	Chignik	May 30	June 11	Sept. 9	Sept. 26
	Bristol Bay	May 29, June 1-2	June 10, 12	Aug. 10, 13	Aug. 18, 22, 23
1937	Karluk	Apr. 17	Apr. 24	Oct. 7	Oct. 14
	Chignik	Apr. 17	Apr. 26	Sept. 24	Oct. 1
	Bristol Bay	May 13, 15, 18, 23	May 23, 24, 26, 31	Aug. 7, 8, 9	Aug. 14, 16, 17, 18

(Testimony of Austin K. Tichenor.)

That is all, Mr. Tichenor.

Cross Examination

By Mr. Resner:

Q. Referring to these supplies, Mr. Tichenor, you purchased for the 1940 season, as you said. These are supplies you can use next season, are they not?

A. Yes, they can be used next year.

Q. You expect to use them next year, do you not?

A. Well, naturally, if we go to Alaska next year we would use them, yes.

Q. Well, you expect to go to Alaska next year, don't you? A. We hope so.

Q. Now then, directing your attention to last season, how many vessels did you use during the last season for voyages to Alaska?

A. 1939 we used all vessels except the Bearing. I don't think we used the Bearing in 1939, did we George?

Mr. Oliver: All our vessels except the Bearing.

By Mr. Resner:

Q. And that means how many, Mr. Tichenor?

A. That would mean three major vessels and the motor ship Quejack. I am not referring to the tenders like the Cannack and Kadiack and those, but the major vessels. [169]

Q. In other words, this year you expected to use one less major vessel than you used last year?

(Testimony of Austin K. Tichenor.)

A. No, we expected to use two. Yes, one less than last year.

Q. For instance, you say you didn't use the Bearing last year. You chartered that last year and this year, and you planned not to use the Delaroth this season?

A. We planned not to use the Delaroth this season.

Q. How many men do you generally use in the San Francisco operation in your Alaska plant?

A. Well, if we are working to capacity, including Central Alaska and Bristol Bay, we use about 2,200 people, I imagine.

Q. Out of San Francisco?

A. Out of San Francisco.

Q. Cannery Workers, that is?

A. That is everybody.

Q. And had you planned to use that same amount this year had you made the expedition?

A. No, this year owing to the restrictions by the government we were to use about 66 2/3% of our people in Bristol Bay. We had planned to use approximately the same number of people in Central Alaska.

Q. Now, could you reduce that to figures, Mr. Tichenor? Let us direct your attention first to Central Alaska. How many men would you have used this year had you gone?

A. In Central Alaska?

Q. In Central Alaska?

(Testimony of Austin K. Tichenor.)

A. I think we would have used a similar amount of people that we did last year in Central Alaska.

Q. Approximately how many cannery workers does that represent?

A. In Central Alaska you are talking about?

Q. Yes.

A. About 275, I imagine. I am speaking from my opinion. About 275, I imagine.

Q. Yes, all I want is as to your best knowledge. Do you know how many you used in Central last year? Cannery Workers? How many did you use in Central Alaska last season?

A. I think we used about the same. I am not quite sure.

Q. Directing your attention to Bristol Bay this year, you say you plan to use about two thirds of what you used last year in the Bristol Bay operation? A. About two thirds, yes.

Q. And how many did you use in Bristol Bay last year of cannery workers?

A. Let's see, I will have to add up the line and I can tell approximately.

Mr. Madison: Don't you fellows know? [170]

Mr. Resner: Yes, we know.

Mr. Madison: Well, what does the Secretary have it? Mr. Tichenor doesn't know off hand. Mr. Woolf?

Mr. Woolf: Nine hundred to a thousand men.

A. (Mr. Tichenor): I think about 940 in Bristol Bay.

(Testimony of Austin K. Tichenor.)

Mr. Woolf: Nine hundred to a thousand in both operations? A. (Mr. Tichenor): Yes.

Referee Roden: That is in Bristol Bay and in Central Alaska.

Mr. Madison: Mr. Woolf thinks it is between nine hundred to a thousand for the two operations together.

Mr. Woolf: All operations of this one company. That is correct.

Mr. Madison: Supposing the records show the answer is 880 in Bristol Bay? This is for last year, as I understand it. And 275, we will say, in Central Alaska?

Mr. Woolf: It will run around a thousand men for the one company.

By Mr. Resner:

Q. Then, to sum this thing up, for Bristol Bay you plan to use two thirds of the Alaska Cannery Workers crew? At Bristol Bay this year?

A. The idea was.

Q. That is, from San Francisco, Mr. Tichenor?

A. Yes. The fishing effort had been curtailed by the government 33 1/3%, and we would, naturally, have to reduce our outfit about 33 1/3%.

Q. Can you tell me how many lines you planned to run in Alaska this season from San Francisco?

A. Bristol Bay?

Q. First directing your attention to Bristol Bay.

A. Well, we planned to use about one third less

(Testimony of Austin K. Tichenor.)

than what we had the previous year. Now, I just don't recall the number of lines we worked the previous year.

Q. And the same is true, of course, of Central Alaska? A. No.

Q. In Central Alaska you planned to use what you did in last year? A. Yes.

Q. Directing your attention to Central Alaska, you have traps at that operation, have you not?

A. Yes, we have.

Q. Those traps are in operation this season, are they not?

A. They are not in operation this season.

Q. Not for your company, Mr. Tichenor, but aren't they leased [171] or used by the Pacific-American.

Mr. Madison: If your honor please, I don't see what relevancy this has to the thing. This may be in the manner of a business secret to the Alaska Packers. What relevancy has it to this?

Referee Roden: Confine yourself to the fact whether or not they are being operated by anybody.

By Mr. Resner:

Q. Are the traps being operated by anybody, Mr. Tichenor?

A. They are being operated under a form of lease to a man named Hofstad, and under an arrangement with the Alaska Fishermens Union at Seattle, I believe. I don't know the details.

(Testimony of Austin K. Tichenor.)

Q. In the Central Alaska operation, Mr. Tichenor, all you use is trap fishing there, isn't that correct?

A. No, it is not. We use trap fishing, and we use beach seining, and we use what they call set-netting or set-gill-netting—it is three different methods of fishing.

Q. With regard to that fishing, though, all of those traps and set nets have been leased out to another operator for this season?

A. We haven't leased any of the set-netting sites at all. The beach seine at Karluk has been turned over to the natives, gratis, to let them go ahead and fish in any way they see fit. And they will get the income from it, whatever it may be. We loan them the gear without any expectation of return.

Q. But then the traps, of course, have been leased out, as you previously testified?

Referee Roden: We have had that several times now. Let's get along, gentlemen.

By Mr. Resner:

Q. With regard to the canneries at Bristol Bay, what particular canneries did you plan not to operate this year?

A. Well, a great deal depended upon the arrangement we would have been able to make with labor, and we didn't intend not to operate any of our canneries. There are two locations for instance, in Bristol Bay. One is Ugasik, what we will call a one-line cannery.

(Testimony of Austin K. Tichenor.)

Q. Did you plan to operate that one-line cannery?

A. Wait until I get around to that please! And then there is Egogik—They work together—which is a three-line cannery. Now then, we had in view to operate Egogik on what they call a two-line basis; however, we would [172] possibly have fished in Ugasik and taken Ugasik fish to Egogik, with the result we would start the third line Egogik but not operate any lines in Ugasik. However, the same number of souls would have been employed.

Q. Well, then, how many canneries do you have at Bristol Bay, generally manned by workers from San Francisco?

A. We have seven canneries in Bristol Bay.

Q. How many of those are operated by cannery workers in San Francisco?

A. They are all operated from San Francisco. In fact, all our canneries all over Alaska are operated by San Francisco and by San Francisco Cannery Workers.

Q. Would you give us the names of those canneries, Mr. Tichenor? And you might have to spell them so the Reporter could get them, because they are odd names.

A. Well, we will take them geographically: Nshagak; Kvichak, Diamond-J after that; Kvichak, Diamond-X; and Naknik, Diamond N; Egegak, Diamond-E; and Ujshik, Diamond-U. Now you understand, there are other canneries we have that

(Testimony of Austin K. Tichenor.)

we do not operate; but we keep them as in the case of disaster to start them up.

Q. This is all in Bristol Bay, now, we are talking about?

A. These are the canneries we usually operate in Bristol Bay. We have other canneries.

Q. I am just talking about the Bristol Bay operation. A. That is all.

Q. Directing your attention to the canneries whose names you have just given can you give us your best judgment of what your plans were as to which of these canneries you planned not to opate this year?

Mr. Madison: He testified he planned to operate all of them.

Referee Roden: Yes.

Mr. Resner: Let the witness answer, Mr. Madison.

Mr. Madison: Don't mislead him by the question, deliberately mislead him, and expect us not to object.

Mr. Resner: I am not trying to mislead the witness, and I am sure Mr. Tichenor is quite able to take care of himself.

Referee Roden: I think it is too much repetition. That is the only objection I have.

Mr. Resner: The point is this, Mr. Referee, obviously there was curtailment that had nothing to do with the labor dispute; [173] and what I wanted to do was get those canneries which were not go-

(Testimony of Austin K. Tichenor.)

ing to operate so those men that worked there last year are unquestionably entitled to benefits.

Referee Roden: The witness has testified the Company expected to operate them all, isn't that right?

Mr. Resner: I don't know. I want to find out whether or not that is the case.

Referee Roden: You asked your question once and he said he was going to operate them all.

Mr. Resner: Are you going to permit me to develop this line of questions?

Referee Roden: Go ahead. I am trying to have you bring out every point you have, but there is no use in asking the same question a dozen times.

By Mr. Resner:

Q. That is what I am trying to bring out. Let's try this one point with respect to these Bristol Bay Canneries you have just mentioned, are any of those canneries that you plan not to use at all this Spring?

A. We hadn't decided fully on that. As I told you before, there was a 33 1/3% reduction in fishing efforts that was inaugurated by the government. Now, we were undecided whether we should cut out a cannery, say like Diamond-X, entirely or work both canneries on skeleton form. A good deal depended upon the final arrangement made with labor here.

Q. This question of the government curtailment, of course, entered into the matter of whether or

(Testimony of Austin K. Tichenor.)

not you were going to consummate this years agreements with the Cannery Workers Union.

A. What is that again?

Q. This question of the government curtailment, of course, played an important part in whether or not your company planned to consummate an agreement with the Cannery Workers this year in San Francisco?

A. No, I don't think the government regulations would have affected our activities in Alaska except in that reduced form of 33 1/3%. What would affect us more than anything else vitally was the arrangement with labor.

Q. Isn't it true, of course, this curtailment was the real basis or one of the bases for the San Francisco Packers requesting the Union to sign the 1939 Seattle Agreement rather than offering to the union the 1939 San Francisco Agreement? Do you understand [174] the question, Mr. Tichenor?

Let us talk for the Alaska Packers. This curtailment played an important part in your decision and in your offering to the cannery workers the 1939 Seattle Agreement rather than the 1939 San Francisco Agreement?

A. I don't really know what agreement we offered to the cannery workers here. I wasn't handling that end of it, as you know. That was handled through this Alaska Salmon Industry. I don't know what offer they did make.

Q. You turned your negotiations over to Mr. St.

(Testimony of Austin K. Tichenor.)

Sure and Mr. Moore, representing the Alaska Salmon Industry?

A. I conferred with them from time to time concerning the meetings, but I didn't keep in touch with the details. I left that to them.

Q. They reported back to you the progress of the negotiations, didn't they?

A. Not very often, no.

Q. Had you delegated to them complete authority to sign on whatever terms they saw fit?

A. We instructed them, so far as our company was concerned, that we could go to Alaska under certain conditions—wages and working conditions.

Q. And what were those working conditions and wages?

A. That is a very long winded proposition. In fact, it was the conditions which, as I understand it, that this Mr. St. Sure and his associates presented to you people. Now, whatever they were, those were them. But I can't recall them.

Q. Well, the testimony here, and I suppose you heard some of it, Mr. Tichenor, were the negotiators for the Alaska Salmon Industry offered to the Cannery Workers Union the 1939 Seattle Agreement, or the 1940 Seattle Agreement. That they did not offer to our local Cannery Workers Union the 1939 San Francisco Agreement, which had higher wage scales and better conditions. Now then, directing your attention—you agree with that, Mr. Madison? That statement of fact?

Mr. Madison: The evidence speaks for itself.

(Testimony of Austin K. Tichenor.)

Mr. Resner: I don't want to mislead the witness.

Mr. Madison: I appreciate that.

By Mr. Resner:

Q. Now, then, you instructed Mr. St. Sure and Mr. Moore, then, that they should not offer to the Cannery Workers of San Francisco a renewal or a re-execution of the 1939 San Francisco Agreement, did you not?

A. You say we did or we did not? [175]

Q. I am trying to find out whether you did or did not?

A. I believe we did. We offered a renewal of the 1939 Agreement.

Q. I am speaking now of the San Francisco Agreement; you know, the San Francisco and Seattle 1939 Agreements were different, had different wage scales, and the question I am trying to find out is whether you Alaska Packers instructed your negotiators to offer to the union for 1940 the same contract that you had with the union in San Francisco in 1939?

A. I am not quite sure. I couldn't answer that positively. There is so much water passed over the dam since then. But I thought that we were satisfied with the cannery workers to go to Alaska under 1939 agreements with certain modifications. Now, what those modifications were I don't know.

Q. And you are referring now, of course, to the San Francisco.

A. But the modifications were quite an impor-

(Testimony of Austin K. Tichenor.)

tant part of the offer made to the cannery workers.

Q. And you are referring now, of course, to the 1939 San Francisco agreements?

A. The 1939.

Q. Well, then, of your own knowledge you don't know whether your negotiators, Mr. St. Sure and Mr. Moore, offered to the San Francisco Cannery Workers the 1939 San Francisco agreements?

A. I was not there when the offer was made, no.

Q. You don't even know whether such an offer was made?

A. I don't know what offer they made, outside of what they reported to me. They reported they had offered a certain agreement, whatever it was at that time; I can't recall the details now.

Q. The sailings for Alaska generally from year to year for the Bristol Bay operations commence around the latter part of May, do they not, in San Francisco?

A. The last five or six years the departure of the fleet has been so much delayed owing to labor difficulties with various organizations that our sailing time was quite late. We should sail with modern steamers that we operate now not later than about the 14th or 15th of May to perform our work and get our canneries ready for fishing operations in Bristol Bay, which we are talking about.

Q. How long does it take you to outfit a ship with perishables?

A. Well, it takes ordinarily about two weeks of certain supplies; naturally, you must have some

(Testimony of Austin K. Tichenor.)

of them on hand that you get from the East, like linen nets come out from Philadelphia, as an instance.

Q. Well, you had those on hand this year, according to your testimony?

A. Well, we had bought them on hand. [176]

Q. But it would?

A. But it would take ordinarily two weeks to load her, get the people on board, and get away from here.

Q. Did you give Mr. St. Sure or Mr. Moore any instructions on the deadline for the signing of agreements on the Bristol Bay operations?

A. I don't like that term "deadline" in the first place, but we told Mr. St. Sure—we gave him a date after which it would be impossible for us to outfit and get away.

Q. Can you tell us what that date was?

A. Bristol Bay?

Q. Bristol Bay from San Francisco?

A. I think it was about the 3rd of May. I have that impression, 3rd or 4th of May.

Q. Now, on this matter of wage claims, in previous years, that is prior to this year, you have taken up with the union or the union has taken up with you the question of disputed wage claims extending over from the prior season? Isn't that a fact?

A. Well, we have at times discussed disputed claims, yes; not as much as we had presented to us this year, but there has been instances, yes.

(Testimony of Austin K. Tichenor.)

Q. Directing your attention to the 1939 season, before the 1939 agreement was signed with the union there were wage claims which were taken up with the company and settled as between the company and the union, isn't that true?

A. I believe so, yes.

Q. And after wage claims were out of the way then the contract was negotiated and signed?

A. No.

Q. How did it happen?

A. Well, we have often arranged our contract with various organizations and our working agreements and wage disputes were held in abeyance—and in the Fishermens Union, for instance, as high as two or three years.

Q. But the fact there have been wage disputes or claims which have been a part of the negotiations is not an unusual thing?

A. I don't remember any up until this year. I don't know of any instance where the wage dispute of previous years was brought in as a basis for settlements on the 1940 operations.

Q. I want to ask this. Last year, 1939, weren't wage claims got out of the way first before contracts were signed? A. Not particularly.

Referee Roden: I don't think that is very important.

Mr. Resner: The only point is Mr. St. Sure tried to make a point of the fact the wage claims the union was presenting [177] was one of the real

(Testimony of Austin K. Tichenor.)

stumbling blocks to the union agreements. That the union wouldn't sign until they were out of the way. And I don't think it is important, either. I just wanted to develop the fact they weren't important.

By Mr. Resner;

Q. Mr. Tichenor, last year Alaska Packers, your company, negotiated your contract directly with the Alaska Cannery Workers Union, did it not?

A. Yes, and with all other organizations.

Q. And with all other organizations. I believe it was you who worked out the agreements with the union committees, as a matter of fact?

A. Yes.

Q. And that is the way you had done it in years prior to 1939 since you had been dealing with labor organizations? A. For many years.

Q. This year negotiations were turned over to Mr. St. Sure and Mr. Moore? A. Yes.

Q. Was there any particular reason you could give us at this time why that was done this year?

A. I imagine they thought I was too easy. I don't know what the reason was. I think our people thought by trying to negotiate a coastwise agreement, a uniform agreement all over the Pacific coast which, I believe, is the natural way of doing this thing. I think it obtained better results, not only for ourselves but for labor.

Q. I agree with you the union wanted to negotiate a coastwise agreement, too; of course, you un-

(Testimony of Austin K. Tichenor.)

derstand they didn't want to give up anything they had here in San Francisco. At least, they wanted that as a minimum from which to start.

A. You mean, the Cannery Workers Union?

Q. The Cannery Workers Union is what I am talking about.

A. Well, I will never forget the experience I had with 1939. We worked along with that idea in view and our friend George Woolf, here sitting alongside you, went to Seattle with that full intention and came back and had entered into an agreement that was coastwise; but, when he got back here the boys, he claim, repudiated it. And they didn't do a thing to us except Hiterlize a little bit and boost it up. Probably that is one of the reasons they wouldn't let me negotiate this agreement this year, and another reason why these boys here are out of employment. That is the way it looks to me. [178]

Q. Well, regarding next year, can you say at this time with whom you expect to negotiate next year's cannery agreements?

A. You say?

Q. I am talking about 1941?

A. I don't know. That is looking far way ahead. I always got along pretty well with these fellows.

Q. I know. They say that, themselves, Mr. Tichenor. Can you tell us how much of the pack you have on hand this season? Alaska Packers of last year? A. Now?

Q. Yes.

(Testimony of Austin K. Tichenor.)

A. Well, we haven't an abnormal amount. I think that we have less on hand now than, taking a cycle of six years, we have less on hand now than we had for the sixteen years say, about April 1st when we take our inventory; we haven't an excessive amount on hand.

Q. Your only operations are from San Francisco. You don't have any operations out of Seattle, do you? A. No, we do not.

Examination

By Referee Roden:

Q. The amounts on hand now, Mr. Tichenor, is slightly in excess of what they had on hand a year ago, isn't it?

A. I don't think so, Mr. Director. I think what we have on hand now is slightly less than what we had a year ago.

Q. I was reading one of the trade journals on my way down here and was rather struck by the claim made in it.

A. Yes, you are very right. It is a trifle in excess of what we had in 1939.

Q. Yes. That is what I mean.

A. However, it isn't in excess of what we had in 1938 or what we had in 1935, those years. It isn't an excessive amount for us to carry.

Q. At the time these negotiations were going on what was the outlook for the future in the canned salmon market, particularly with reference to the reds?

(Testimony of Austin K. Tichenor.)

A. Well, Mr. Roden, this was a year, 1940, for the salmon canner to operate if he could, with the war clouds gathering in Europe and without an excessive carry-over. The markets were fairly clear and all grades of salmon. This was a year we should operate.

Q. Including the reds?

A. This was a year we should operate, and we were anxious to operate, so far as I am concerned.

Referee Roden: Go ahead, Mr. Resner.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. I just want to ask one question. Mr. Resner brought up the question of your leasing traps and of equipment in Alaska. [179] Now, in regards to any leasing of traps and equipment in Alaska, is it or isn't it true that what leasing arrangements you made were all made subsequent to the time when it became obvious here that you couldn't avoid this trade dispute and couldn't go to Alaska? A. Oh, yes.

Mr. Madison: That is all.

Recross Examination

By Mr. Resner:

Q. One more question. This year you had a different way of making your cans or different type of can than last year, did you not, Mr. Tichenor?

A. Yes. That is, we endeavored to install this what they call the modern can making machinery. In

(Testimony of Austin K. Tichenor.)

other words, the Alaska Packers Association for years have been their own can makers. This year we were going to obtain collapsible cans, which we did, in order to compete with our competitors.

Q. In other words, you in former years had made your cans on the grounds in Seattle, at Alaska?

A. On the grounds. In that way we were able to offer a longer term of employment to these boys than we would with the collapsed cans.

Q. That is right. Last year the working season for the Cannery Workers would have been about three weeks more. That is, making of cans up there would have taken three weeks more than this year?

A. I imagine so.

Q. In other words, Mr. Tichenor, that would have or could have delayed your departure an additional three weeks over previous years?

A. It would after this year, but this year in making those installations we were anxious to get away early.

Q. But this year it could have, at least, delayed your departure three weeks and you could have still carried on your operations there and completed your pack?

A. No, I wouldn't say that. For the installation of this machinery it would be necessary, if anything, to get away a trifle earlier than under ordinary conditions. Next year, possibly, we could possibly afford to delay a little bit.

Mr. Resner: That is all. Thank you.

MR. G. B. PETERSON,

64 Pine Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name, please?

A. G. B. Peterson.

Q. And your address?

A. 64 Pine Street, San Francisco. [180]

Q. And your occupation?

A. General Manager of the Red Salmon Canning Company.

Q. Mr. Peterson, are you the Executive of the Red Salmon Canning Company who has had charge of the expeditions for Red Salmon Canning Company to Alaska in prior years?

A. Since 1934.

Q. And you are the Executive of the Red Salmon Canning Company who had most to do with the arrangements for going north this year?

A. That is right.

Q. Now, Mr. Peterson, did the Red Salmon Canning Company plan if they could avoid this labor dispute and make proper arrangements on going to Alaska this year?

A. We made every effort possible to do so.

Q. As I understand it, you operated at Bristol Bay only?

A. That is correct. We have two canneries there that we operate.

(Testimony of G. B. Peterson.)

Q. And you have no operations in Central Alaska at all?

A. No, none whatever. Nowhere else.

Q. Now, Mr. Peterson, what vessel has it been your custom or vessels has it been your custom to use in connection with your operations of the past?

A. In the last several years we have operated two vessels: The American Star, a large one; and the Madrona, which is a very small one. Both leave San Francisco, or have left, each Spring for Bristol Bay.

Q. Now, Mr. Peterson, did you have opportunities in the Fall of 1939 and Spring of 1940 to make profitable charters on these two vessels?

A. I don't recollect in the Fall, but we did have a number of opportunities in the Spring.

Q. Of 1940? A. 1940, yes.

Q. To charter these vessels on a very favorable basis? A. That is right.

Q. And that is because, I assume, of a shortage of vessels generally throughout the world during the European war? A. Yes.

Q. Did you accept any of those charter offers?

A. No, we did not.

Q. Why not?

A. About January our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations. And if we chartered in January or thereabouts it was

(Testimony of G. B. Peterson.)

a danger the boat might be held up for one reason or another and thereby delay [181] or prevent our expedition. We did entertain one charter where we offered the boat, but we offered with the stipulation the person wanting to charter it, because it was in the nature of a salvage job, that they be back, I think it was, by the middle of April. And we, as part of the terms, insisted they put up, I think, a hundred thousand dollar bond, or something like that, for any delay at all. But that was one of the reasons the charter was not accepted.

Q. Now, as I understand, when you say it would interfere with your operations you mean interfere with the trip to Bristol Bay from San Francisco in May of this year? A. That is right.

Q. Now Mr. Peterson, since the expedition failed to sail, say, after the date given as May 3rd or given on May 3rd or about May 3rd, as the last date upon which the sailing could take place, have you made alterations in your ship with a view of possibly making it available for other runs?

A. Yes, beginning immediately after the 3rd, or a few days after, why, we started putting the boat in condition to charter. These boats, as you probably know, are specially adapted for our trade. At least, our particular boat is; and I think it is true of the Alaska Packers as well. We have a lot of these Standey Bunks, and other equipment aboard, which makes them a passenger ship in the terminology of the U. S. Government, but they are

(Testimony of G. B. Peterson.)

not a type of vessel that is readily charterable. At least, our boat is not. And it means quite a bit of change in order to prepare it for chartering as a freighter. We have since put the boat in that shape, but we did not do anything until subsequent to April—I mean May 3rd.

Q. In other words, the changes to make the boat available for other than the Alaska Fishing Industry voyage have all been made subsequent to May 3rd? A. That is right.

Q. And nothing was done to interfere with the vessel being hundred percent available until after May 3rd?

That is true. And it is even further than that. For instance, we filled it up with oil, which is peculiar to our industry in Alaska because we use the fuel oil not only on the ship as fuel oil but we take it ashore and use it in our canneries. And we filled up with this particular type of fuel oil, which costs more and is a thinner type,—I think, that would be the easier way to describe it. It costs more money, but it flows easier; and up in Alaska where it is cold the flow is, of course, restricted by the cold weather. If we were going to fill the [182] boat up for a normal charter we would fill it up with what is known as Bunker-C Fuel Oil, which is a cheaper but a better oil, for the freighter. That oil is still in that ship and we will lose money when we charter it, if and when.

Q. During the winter did you spend money get-

(Testimony of G. B. Peterson.)

ting the quarters for the crew, for the fishermen, ready?

A. Several of the unions went on board our ship and asked us to make changes, which we did for that particular voyage. Some of the work that we did on board, painting and what not, we would not have done if we had contemplated chartering it as a freighter instead of operating in the salmon business.

Q. Did you remove salmon stored so as to make it available to Alaska? A. We did.

Q. And during April did you employ men to assist in the purchase of supplies for the Northern Alaska trip?

A. Yes. That was two reasons. One was we, of course, wanted to get everything done expeditiously, but when the deadline was set, as you have used it here,—our organization being somewhat smaller than the Alaska Packers has to take a little more time. We haven't got the force that we can throw into the job. So we engaged the services of another man. We were fortunate to get one of the Alaska Salmon Company's men to come over so it would expedite our departure in order that we could get ready a little faster than normal. We would rather have had a date earlier than May 3rd, as I think Mr. St. Sure testified to yesterday.

Q. Did you prepare the electric Baker on the American Star to be used in transporting all these men for cooking meals for them?

(Testimony of G. B. Peterson.)

A. Yes. That would not have been done just to charter.

Q. And that was done during the Spring of this year?

A. Yes.

Q. Now, in regards to the proposed trip to Alaska, what would you say about the purchase of supplies? You have heard Mr. Tichenor's testimony here. Did you purchase the supplies that he purchased, in substantially the same way?

A. We went ahead on the definite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd. When May 3rd passed and there were no agreements with the unions—in fact, I think there was one agreement, but it only involved two men. So far as we were concerned. That is the Blacksmiths Union. We saw there was no hope of going. In fact, we couldn't get our various supplies that we would [183] ordinarily buy in that time to go in any shorter time than had been set.

Q. Did you want to go to Alaska, your company?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation 1935; and our Board of Director instructed me to prepare for an operation. We decided upon the outfitting for our two canneries; how many cases we would prepare to pack. We arranged credits at the bank for the amount of money we thought we might need.

(Testimony of G. B. Peterson.)

We drew up a complete budget as to any improvements that were needed, which were presented to the Board of Directors and approved. And the expenses were entered into. As a result of that we bought a power scow, which we now have; and it is in Seattle. It will be a loss to the extent of any use this year. We bought our nets. We bought our cans. We bought some casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment. It won't be used. We ordered a new lift truck. Well, there are an infinite number of things we did buy which had to be bought prior to May 3rd if we were going to get out in time to make the season. Naturally, we didn't get ahead and buy anything that wasn't necessary to buy prior to that time because everything that we don't use is a loss in one way or another, if nothing else in insurance and taxes. But we were prepared and would have gone had agreements been made by the date set.

Q. I will show you here a statement that was prepared by one of your associates showing the dates in which the American Star and Madrona sailed in the years 1937, 1938, and 1939, the dates they left San Francisco and arrived at Alaska.

A. Bristol Bay, you might say.

Q. Leave Alaska and arrive at San Francisco. And I will ask that this document be introduced in evidence and marked. I will ask you, first, if that is correct?

(Testimony of G. B. Peterson.)

A. I would say approximately correct, without having checked the accurate dates.

Mr. Resner: I have no objection to the portion of it dealing with when the ships sailed and arrived, Mr. Commissioner, but those portions stating below Subject and Exempt apparently means days the Packers says men are subject and exempt to the Act?

Referee Roden: Simply for the purpose of showing when the company ships sailed from here. [184]

Mr. Resner: We will tear off the bottom part, then?

Referee Roden: We will cross it off. (Indicating)

By Mr. Madison:

Q. Now, you stated so far as the applicable parts of that as to the sailings that is correct, Mr. Peterson? A. Approximately.

Mr. Madison: I will ask it be introduced and marked Canners Exhibit GG.

A. I say I have no reason to doubt that it isn't correct.

RESPONDENT'S EXHIBIT GG

RED SALMON

Year		Lv—SF	Ar—NK	Lv—Alaska	Ar—SF
1939	American Star	5/27/39	6/ 6/39	8/ 6/39	8/15/39
	Madrono	5/27/39	6/ 6/39	8/ 7/39	8/16/39
1938	American Star	6/ 1/38	6/11/38	8/11/38	8/21/38
	Madrono	5/27/38	6/ 7/38	8/14/38	8/23/38
1937	American Star	5/20/37	6/ 1/37	8/ 8/37	8/18/37
	Madrono	5/ 8/37	5/21/37	8/ 6/37	8/17/37

(Testimony of G. B. Peterson.)

	Subject	Exempt
Cannery Workers 1939	6/ 7— 6/30	5/27— 6/ 6
	7/ 1— 8/ 1	8/ 2— 8/15
Cannery Workers 1938	6/13— 6/30	6/ 1— 6/12
	7/ 1— 8/10	8/11— 8/21
Cannery Workers 1937	6/ 2— 6/30	5/20— 6/ 1
	7/ 1— 8/ 7	8/ 1— 8/18

Cross Examination

By Mr. Resner:

Q. Directing your attention to the curtailment this season, Mr. Peterson, how did that affect your company with the number of cannery workers you expected to hire in San Francisco.

A. Our company, being small, is in a little different position than the larger companies. The larger companies, of course, have several boats and several canneries. It is easier for them to curtail than it is for us. We can't cut a boat in half nor a cannery in half, or any part; so that we planned to go ahead on a full operation No. 1, because it either had to abandon the operations entirely or go on a full operation. And, furthermore, we knew that the Alaska Salmon Company was not going, and we felt that, therefore, there would be no infringement upon the government curtailment program even though we went on a full basis. And we so advised the U. S. Government we were going to do it at the meeting with the Commissioner. We had every intention of taking the same number of men this year that we took last year. In fact, among the cannery workers we planned to take a few more.

(Testimony of G. B. Peterson.)

Q. Then, you planned to take up the amount of fish which normally would have been allotted to the Alaska Salmon Company because they didn't plan to go this season, is that correct?

A. Not to that extent, because their operations is the equivalent of ours, and whether one third curtailment, of course, we would only absorb a minor portion of what they would normally take.

Q. When did you learn they planned to give up their operations?

A. Well, on about the same time that all of you were advised. As a matter of fact, when Mr. Fleager advised us officially, why, we felt it was the only decent thing to immediately notify the unions so they would not be under any delusion as to how many men were going to go or not going to go, and the men wouldn't be waiting around here for jobs [185] that wouldn't be offered them.

Q. That was around the latter part of April?

A. I don't know when it was, but I remember Mr. Tichenor and Mr. St. Sure and myself thought it was only fair to notify you fellows the same as we.

Q. I understand that thoroughly. I was trying to get you to recall the approximate dates you were so notified by the Alaska Salmon and I was just trying to find out if you recall that was sometime near the latter part of April, between the 20th and 25th?

A. I would say it was somewhere in April when it was finally and officially decided.

(Testimony of G. B. Peterson.)

Q. They would not make their expeditions this year? A. Yes.

Q. On the subject of wage claims, I suppose, you argued with the union and settled wage claims in years prior to this one, have you not?

A. Oh, yes. We have had wage claims a good many years. We attempt to pay the men everything that we can liberally interpret they are entitled to; and, naturally, men may differ with us. Some of the ones we feel are obviously unjust we have refused to pay. That doesn't mean that at the last minute we haven't had a forcing of paying them irrespective of their validity, as we see it.

Q. But the dispute over wage claims in previous years has never prevented signing of an agreement for the expedition to Alaska?

A. Well, I don't think it has interfered so much with the agreement, but I remember the year before the Cannery Workers Union refused to send the remaining few men to our ship, which was ready and loaded and all the men on board with the exception of a few, but refused to send those few until we had paid certain claims.

Q. These supplies you describe are non-perishable supplies, are they not?

A. Which ones to you mean?

Q. The ones you described as having been purchased for the current season?

A. Well, I would have to have a definition of what you mean by non-perishable? Your cans may rust and are, therefore, valueless the following year.

(Testimony of G. B. Peterson.)

You are not certain of that. But anything may be outmoded. In other words, you take a definite risk whenever you buy anything that you are not going to use the current year.

Q. But you planned to use all this material and current equipment you bought this year in your 1941 operations, do you not?

A. We hope to, but there may be changes of many kinds which will make some of that equipment worthless to us. We are going to try to use it, certainly; but we have already disposed of a lot of that stuff, and some of it at [186] a material loss to us.

Q. But the rest of it you do expect to use next year? Barring the contingency?

A. If we can't sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can.

Q. You knew about the government's relations sometime ago?

A. We knew it about the first of January, I think, somewhere around in January.

Q. January of 1939, that is?

A. No, 1940. It is official. You can get the official report.

Q. Certainly. Well, this curtailment is a regular thing in the industry. Every five years or so some of the grounds are shut down. This is what they call a cycle year, isn't that correct?

A. Well, in 1935, as I testified, the government came out and said they were not going to permit

(Testimony of G. B. Peterson.)

any operation in Bristol Bay. That has been brought out by other witnesses. Some did operate, but we did not.

Q. Then, whenever this curtailment year appears, why, there is, of course, always the possibility there won't be an operation that year as you normally carry it on, isn't that true?

A. Well, of course, the theory of this curtailment in 1935 was so that the run in 1940 would be a good one; and, otherwise, there is no point in curtailment in prior cycles.

Q. The question, Mr. Peterson, is this. Whenever the government lays down a curtailment season the probability and possibility, as a matter of fact, exists there you won't operate at all because of that curtailment. Isn't that true?

A. Well, the only time we have not operated is in 1935 when the Government wouldn't permit any operation. But whenever they have permitted any operation we have always operated, no matter how it was curtailed.

Q. Didn't the fact this was a curtailed season enter into the fact you didn't arrive at agreement with the Cannery Workers Union this year?

A. Well, it certainly can't be claimed that way with us, because I just testified we were going under full operation.

Q. Last year, I believe, you negotiated a contract with the Cannery Workers Union for your company?

(Testimony of G. B. Peterson.)

A. Our situation is this. Being of a smaller size than the Alaska Packers; and, furthermore, they have to get off an operation earlier to Southern Alaska. They have taken the lead in all negotiations and, as a rule, the various unions come to us and excepting as to minor details, Manning Scales and particular housing conditions and things of that kind, why, the [187] agreement we sign is almost identical with that signed by the Alaska Packers Association.

Q. And this year you and the other two companies entered into this corporation and turned those negotiations over to the Alaska Salmon Industry, Inc.?

A. We turned it over to the Alaska Salmon Industry for various reasons brought out here. The main thing, we were losing money for several years and felt that couldn't go on, not only for our own protection but for the entire industry and the workers. We felt we were being forced to operate at a disadvantage over the Seattle operators and we had to sell our pack in competition with them.

Q. Well, did you instruct Mr. St. Sure the absolute maximum that you would permit him to sign on for San Francisco operations of the Cannery workers Union? A. Yes, we did.

Q. Can you tell us what that was?

A. Well, of course, we instructed what we wanted; then the Alaska Packers and ourselves tried to work out what was a fair adjustment of our ideas. You have got to be a little flexible in the

(Testimony of G. B. Peterson.)

thing, but bredly speaking we insisted that we had to have some production because we had not been able to make any profit over several years. The Alaska Cannery Workers Union which you speak of, of course, was a peculiar situation in that we had reached what we thought was an industry wide agreement the prior year and your representative, that is the representative of this union, was in Alaska and signed for what we thought this union and we had negotiated—what we thought was an industry wide agreement.

By Mr. Madison:

Q. In Seattle, you mean? A. In Seattle.

By Mr. Resner:

Q. You are referring now to 1939?

A. Yes. Then they came down to San Francisco. And after we had everything, you might say, loaded on our boats they said, "Oh, we are not going to go for what we signed for. We demand that we get some raises here, there and everywhere!"

Well, we were in a predicament where we practically had to give in. Therefore, we felt that those tactics were so obviously unfair, especially as we negotiated what we thought was a very liberal agreement in 1939, we felt that we should not agree to these advantages which had been gained under duress and insisted that the 1939 Seattle Agreement be adhered to.

Q. And then you never instructed Mr. St. Sure that he should offer to the union the 1939 San Fran-

(Testimony of G. B. Peterson.)

cisco Agreement for the operations [188] out of this port?

A. I never heard any such offer as that being made.

Q. Do you have operations from Seattle?

A. No.

Q. San Francisco is your only operation?

A. Yes.

Q. What about your pack on hand at this time? What is the extent of it?

A. Our pack? I could give you the figures, but I notice the Alaska Packers did not and I imagine that that is probably a confidential matter. But I can say it is less than last year.

Q. Less than last year's pack?

A. Yes. We have on hand at the present time less than we had on hand at this time last year.

Q. These vessels you have chartered out since the season have been given out?

A. As a matter of fact, we haven't. We thought we had a charter, but we are not sure right now whether it is going to go through or not.

Mr. Resner: That is all. Thank you very much, Mr. Peterson.

Examination by Mr. Oliver:

Q. Mr. Peterson, may I ask you a couple of question? I expected to have a statement of sailings similar to the other companies, but it hasn't arrived.

Mr. Peterson, you are familiar with the sailings by the Alaska Salmon Company to Alaska?

(Testimony of G. B. Peterson.)

A. Generally we are familiar with what the other fellow does.

Q. And it is true, is it not, the sailings from San Francisco to Alaska and return by the Alaska Salmon Company vessels are approximately the same as yours?

A. Yes, I would say approximately.

Q. And you are familiar, are you not, with the location of the plants of the Alaska Salmon Company in Alaska? A. I am.

Q. And those plants are situated wholly in the Bristol Bay area, are they not? A. Yes.

Q. And there are no operations conducted by the Alaska Salmon Company in Central and Southern Alaska? A. Not that I know of.

Q. You mentioned in your testimony that upon being notified by Mr. Fleager that the Alaska Salmon Company was not to operate this year that you —and I couldn't hear whether you said anybody else—insisted that notification would be immediately given to the unions. It is true, is it not, that Mr. Fleager along with you and the others were insistant upon notification being given to the unions immediately?

A. Oh, yes. We all discussed it, and it seemed the only [189] thing to do.

Mr. Oliver: That is all.

By Mr. Resner:

Q. Just one question. You don't have any operations at all in Alaska this year, do you?

A. No.

(Testimony of G. B. Peterson.)

Q. And you haven't started it, and none is planned? A. No.

Mr. Madison: I have nothing further, if your honor please, in connection with this offer of proof, copy of which I have given your honor and copy of which I have given Counsel for the Claimants. So far as pertains particularly to a wage dispute I doubt if this offer has any material direct application. However, it occurred to me in connection with claims which may be made either by these Claimants or others for unemployment compensation in Alaska that this statement of the operations and classifications of the various ex-employes up there may be of some help to the Commission. Therefore, I will make this offer. If Counsel wishes to stipulate to it there will be no necessity of calling any witness. If your honor decides to reject it on the ground it is incompetent and irrelevant and immaterial then let the offer stand as our offer subject to that ruling. If neither of those two things are done, I will put a witness on and he will testify to all this.

Mr. Resner: I don't think it is relevant, Mr. Commissioner. I would object to it on that ground. It is not on the subject before the Board at this time. As I understand it, it is simply a question of whether or not such a labor dispute exists as justifies nonpayment of benefits to the men of the Alaska Cannery Workers Union, Local No. 5.

Referee Roden: Well, I tell you, Gentlemen. My directions are to simply investigate as to

whether or not a labor dispute existed at the time these negotiations were going on; and I am willing to do anything to expedite the adjustment of the claims of these men, if they have any claims. And I think the offer of proof is material and for that reason I overrule the objection, unless you submit some evidence concerning it?

Mr. Resner: I submit here evidence is being on behalf of all these organizations who, of course, are without representation on the matter before you. And the only point, as I understand it, Mr. Madison wants to bring out is that certain classifications according to the Packers contentions are exempt from [190] operations of the Act and under no circumstances would be entitled to benefits. I believe that is your point, isn't it, Mr. Madison?

Mr. Madison: We only want to get the facts before the Commission up there as to what these men do. The Commission doesn't know what the Fishermen do. They get paid five or six different ways and perform services of one kind or another. These questions have arisen and may arise up there, and we have been asked by our local counsel up there, by the Alaska Counsel, to try to help the Commission by setting forth some evidence here as to what these various people are, who they are, and what they do. Now, that is all this is intended to do.

Mr. Resner: As regards the Cannery Workers Union, of course, if the Referee rules, go ahead. But, as regards these other organizations, as I say, I am not authorized to represent them and they are without representation here. And if any evidence

is going to be taken which later might be the subject for your ruling which would exclude them from benefits, I think it is most inequitable.

Referee Roden: My purpose is this, Mr. Resner, it is quite logical to suppose, for the sake of argument, if the Commission finds that no labor dispute existed still it probably will not say Willy-Nilly, "We are going to pay these claims in full as presented to us." There may be other objections to the payment of these claims. And, to forestall any possible delay, if there is any evidence we can take now upon these points I am ready to take it.

Mr. Resner: As regards the Cannery Workers Union I would agree with you, but as regards all these other unions I would say no, because they aren't registered here.

Mr. Madison: If he doesn't represent them what right has he to make an objection?

Mr. Resner: The only party to this hearing is the Alaska Cannery Workers Union. In other words, the Packers deal with all these unions and the only union before the Commission at this time is the Alaska Cannery Workers Union.

Referee Roden: Then we will do this at the present time. We will go on as far as the Cannery Workers Union is concerned, let us proceed on that, then.

Mr. Madison: Well, to shorten the matter may I suggest that you have a chance to read this over?

[191]

That Mr. Barthold if he is called will testify to

this? That will shorten the thing considerably. He is here.

Mr. Resner: Can we have a recess?

(At 10:30 a.m. a five minute recess was taken.)

Referee Roden: Let's proceed, Gentlemen.

(Above mentioned evidence received as Respondent's Exhibit HH.)

RESPONDENT'S EXHIBIT HH

Sailings of Alaska Salmon Companys Vessels for Alaska

S. S. Glacier

1937: Sailed from San Francisco May 21st. arrived in Alaska May 31st. Sailed from Alaska Aug. 8th. arrived San Francisco Aug. 17th.

1938: Sailed from San Francisco June 4th. arrived in Alaska June 12th. Sailed from Alaska Aug. 9th. arrived in San Francisco Aug. 18th.

1939: Sailed from San Francisco May 28th. arrived in Alaska June 6th. Sailed from Alaska Aug. 1st. arrived in San Francisco Aug. 9th.

S. S. Elwyn C. Hale

1937: Sailed from San Francisco May 29th. arrived in Alaska June 11th. Sailed from Alaska Aug. 10th. arrived in San Francisco Aug. 21st.

1938: Did not operate

1939: Sailed from San Francisco May 30th. arrived in Alaska June 15th. Sailed from Alaska Aug.

13th. arrived in San Francisco Aug. 24th.
Above Taken From Company Records

Now, with reference, Gentlemen, to the Offer of Proof I understand we can agree the same may be submitted and a statement made by or given by Mr. Barthold, by the Alaska Packers Association, may be admitted in evidence, or that portion of it may be admitted in evidence appearing on Page 2 under Ted Sneed, head of the United Cannery Agricultural Packing and Allied Workers of Alaska, Alaska Cannery Workers Union, Local No. 5. And all that statement contained in Paragraph 4, commencing on Page 4 and ending on Page 5.

Mr. Resner: That is correct. I understand the stipulation from Mr. Madison is that these matters set forth in the Offer of Proof are matters which would be testified to by Mr. Barthold. You now stipulate he would so testify?

Mr. Madison: That is right.

Mr. Resner: I want to show Page 2 where the statement is made Tallymen are exempt while in launches. I do not stipulate to that. That is purely a matter of law.

Mr. Madison: Purely a matter of opinion. I understand that.

Mr. Resner: I also want to say this does not show the classification of nurses. I understand those were not included in the 1939 agreements whereas in 1940 Local No. 5 claims jurisdiction over them.

Mr. Madison: I understand that is correct.

What disposition is to be made of the balance of the offer?

Referee Roden: I would like to know if there is somebody here who can testify with reference to the statement contained on Page 1 of the proposed offer with reference to the Marine Cooks and Stewards Association? [192]

Mr. Resner: Mr. Examiner, I should have asked you this before. If I may have a few minutes I will call the offices of the District Council of the Federation and ask them what disposition they want with regard to their affiliated unions. You merely want these classification distinctions to show these different classifications of workers belong to these particular unions; and the type of work as described in your offer?

Mr. Madison: Just read that back?

(The Reporter read the previous question.)

All I want this for, this statement, is to prove these facts. These statements are true as to the matters of opinion set forth therein. They are stated to be matters of opinion and, obviously, I am not asking anybody to stipulate those are true.

Mr. Resner: Mr. Examiner, may we have a few minutes? I will call the District Council and ask them what disposition they may want to make. It may be they will be willing to have that go in on that basis.

Mr. Examiner, with respect to this offer of proof, on behalf of the District Council No. 2, Maritime Federation of the Pacific, and its affiliated unions, they have authorized me to go ahead and represent their interests insofar as they appear in this hearing. With regard to the Marine Cooks and Stewards, we have no objection to this classification and the description of their work going in or of the International Association of Machinists, Lodge No. 68; East Bay Union of Machinists; American Communications Association, Marine Division; Marine Firemen; Marine Engineers; Alaska Fishermens Union. We will stipulate Mr. Barthold will testify the matters set forth in this *office* of proof with regard to those unions would be the matters which he would so testify; but we will not stipulate that any of these classifications which are claimed to be exempt in this offer of proof are exempt.

Referee Roden: That is simply an opinion.

Mr. Resner: That is right.

Mr. Madison: I want to make one correction about that. Under the heading of Alaska Fishermens Union it will be noted this stipulation says: "Following is a list of the classifications of men employed by Alaska Packers Association listed under the name of the [193] union with which the Alaska Packers Association had agreements covering such classifications of work in 1939. "Mr. Barthold had just called my attention to an error in that the classifications, fishing bosses, beach bosses, trap bosses, webb bosses, seine bosses, gang bosses, and set net bosses, are not classifications specified in the

agreement. In all respects the statements contained in here will be testified to by him as true.

Mr. Resner: Of course, it will be then understood this offer of proof while what Mr. Barthold will testify to so far as these various unions are concerned our position is there may be some classifications omitted, do not at present appear, but if there do appear some classifications are left off that we would want them included.

Mr. Madison: That is correct. It is understood.

Mr. Resner: Now, Mr. Referee, here is another contract made with these different organizations.

Mr. Madison: Those are the exhibits referred to in the offer of proof.

Mr. Resner: I have no objection to the contracts going in, if that is what you want to do, insofar as the District Council units are concerned. Of course, with respect to the other unions I can't speak.

Referee Roden: Let me get that clear again? Which unions do you now represent?

Mr. Madison: Blacksmiths.

Mr. Resner: Blacksmiths, Carpenters, Master Mates & Pilots, and the Sailors.

Mr. Barthold: Do you represent the East Bay Union, too, of Machinists?

Mr. Resner: Yes.

Mr. Madison: The last two unions named on the top of Page 2 and Master Mates and Pilots and the Sailors Union of the Pacific.

Referee Roden: The American Communications Association?

Mr. Resner: American Communications Association.

Referee Roden: Firemen?

Mr. Resner: Yes.

Referee Roden: Master Mates and Pilots?

Mr. Resner: No.

Referee Roden: Marine Engineers?

Mr. Resner: Yes. [194]

Referee Roden: Sailors?

Mr. Resner: No.

Referee Roden: Alaska Fishermen?

Mr. Resner: Yes.

Referee Roden: That is all.

Mr. Madison: Now, if I may make another suggestion as to those four unions whom you do represent and whom you have no authority to stipulate, I would like to suggest Mr. Barthold be put under oath and he simply testify he has read this over and to the matters specified in relation to those four general classifications the facts set forth here are true and correct and he would so testify, of course.

Referee Roden: This witness' testimony applies to the matters set forth in the offer of proof submitted by the Alaska Packers Association and applies to those organizations, namely, the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers; The United Brotherhood of Carpenters and Joiners of America; Masters, Mates, and Pilots of America, Local 90; and the Sailors Union of the Pacific—which said four organizations are not represented at this hearing by Messrs. Andersen and Resner.

All right.

MR. AUBIN BARTHOLD,

Director of the Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name?

A. Aubin Barthold.

Q. Address? A. 111 California Street.

Q. And you are employed by the California Alaska Packers Association?

A. Yes, by the Alaska Packers Association.

Q. And have been for sometime past?

A. For the past four years.

Q. And what is your title there?

A. I am Director of the Company.

Q. Are you familiar with the operations in Alaska? A. I am.

Q. And with the work that the men do there? I am.

Q. And with the work that the men do there?

A. I am.

Q. And with their classifications? A. I am.

Q. And you read this offer of proof of the Alaska Packers Association? A. Yes, I have.

Q. And may I ask you if every statement contained therein with respect to the International Brotherhood of Blacksmiths, Drop Forgers, [195] and Helpers; the United Brotherhood of Carpenters and Joiners of America; the Masters, Mates, and Pilots of America; and the Sailors Union of the

(Testimony of Aubin Barthold.)

Pacific; and all the statements contained therein with respect to the Blacksmiths, Carpenters, Master Mates and Pilots, and Sailors,—are true and correct to your own knowledge? A. They are.

Mr. Madison: That is all.

Mr. Resner: No questions.

By Referee Roden:

Q. Let me see, is there anybody in the Hall here who belongs to the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers?

A. (No One)

Q. Anybody here who belongs to the United Brotherhood of Carpenters and Joiners of America?

A. (No One)

Q. Anybody here who belongs to the Masters, Mates, and Pilots of America, Local No. 90?

A. (No One)

Q. Anybody here who belongs to the Sailors Union of the Pacific. Nobody here? All right.

Mr. Oliver: I believe Mr. Resner is willing to stipulate, on behalf of Alaska Salmon Company, that Mr. Ernest Asher, Treasurer of Alaska Salmon Company, would testify that Paragraph 4, that the facts stated in Paragraph 4, of the document entitled Offer of Proof of Alaska Packers Association was true and correct with respect to the Cannery Workers of Alaska Salmon Company?

Mr. Resner: I will stipulate Mr. Asher would so testify as stated in Paragraph 4; and I want the record to show, I think it does previously, but the record shows my objection that none of these matters

are relevant or material to the issue at hand in this hearing, which we understand is a question purely and simply of whether or not a labor dispute exists. And we have stipulated to it. We have made our stipulation as regards Mr. Barthold's testimony and various classifications and descriptions of work done solely for the purpose of expediting this matter by stipulating they would so testify.

Referee Roden: Yes.

Now, is there any other stipulation we can make, gentlemen:

Mr. Oliver: I think last night Mr. Resner had requested that Mr. Fleager be present? [196]

Referee Roden: Yes.

Mr. Oliver: And I think we agreed to stipulate along these lines in response to one of your questions to Mr. St. Sure yesterday, your question as to the reason why Alaska Salmon Company did not operate in 1940. Mr. St. Sure made a statement and, I think, the stipulation is to the effect that if Mr. Fleager had testified that he would testify to substantially the same effect as the testimony of Mr. St. Sure.

Referee Roden: In that respect can't we stipulate, Gentlemen, that the principle cause for the Alaska Salmon Company not operating was not on account a labor dispute may have existed?

Mr. Oliver: Well, I don't know just what a labor dispute is?

Referee Roden: Well, we all have a pretty fair idea of what it is, I guess. In other words, were there any reasons, cogent reasons, which compelled

the Alaska Salmon Company not to operate irrespective of any difficulties it might have encountered in negotiating a deal with its proposed employes?

Mr. Oliver: I could not go that far. I would be willing to stipulate that there were factors or causes in addition to a labor dispute.

Referee Roden: How easy would it be to get hold of Mr. Fleager?

Mr. Resner: You would stipulate to this, would you not, that it is a fact that the reason Alaska Salmon did not operate from San Francisco this year was not due solely and only to the existence of an alleged labor dispute?

Mr. Oliver: I would.

Referee Roden: Can't you go a little farther than that? The real cause was the fact that the Alaska Salmon Company was, well, financially embarrassed so it could not have operated even though an agreement had been reached between it and its proposed employes?

Mr. Oliver: No, because that is not the case.

Referee Roden: How difficult is it to get hold of Mr. Fleager?

Mr. Oliver: I think I can get hold of him. If you want Mr. Fleager I shall call him. I was trying to do away with the necessity of it by entering into this stipulation with Mr. Resner, which, apparently, was perfectly satisfactory to him?

Mr. Resner: Yes, the stipulation is all right. But I want to get the additional point, also, if we can. It is our feeling that [197] Alaska Salmon

had major reasons which do not take into account any labor disputes for not making this years expedition. In other words, their principle reasons were something else than an alleged labor dispute.

Referee Roden: Before you call him, let me ask you this question? Can you stipulate that if an agreement had been reached between the Alaska Salmon Company and its proposed employes it would have operated this season?

Mr. Oliver: I would stipulate that after having given its notification that it was not going to operate it would not have conducted any operations out of San Francisco in 1940, irrespective of whether there had been an agreement with the union or had not been an agreement with the union.

Mr. Resner: That is satisfactory.

Referee Roden: All right. You don't have to call him, so far as I am concerned.

Mr. Resner: I just want to call Mr. Rendon for several questions.

Referee Roden: Before we proceed we can all agree the relationship of employer and employe did not exist between these men and the canneries at the time these negotiations were carried on? I guess that is self-evident?

Mr. Madison: Well, it all depends on what tribunal you are before. If we tried to take that position before the Labor Board we would have our ears pinned back. We had once before the same question come up as to whether these people were

our employes or not and the Labor Board ruled they were.

Referee Roden: It seems to me when you sent out notices cancelling your contracts in 1939 that all contractual relations came to an end.

Mr. Madison: The same situation occurred in 1939 and the Labor Board ruled they were employes and we had to recognize their representatives for bargaining purposes. Now, so far as I am concerned, to my mind the question is a question as much of law as anything else and I don't think I for one, want to stipulate to it one way or the other way. That is the way I feel. [198]

Mr. Resner: Of course, it is self evident that at the time the present season would normally have commenced there was no presently existing employer-employe relationship between the various Packers and members of Local No. 5.

Mr. Oliver: That depends.

Mr. Madison: That is what I argued myself black in the face for two years ago before the Labor Board, before Mr. Woolf and your partner, Mr. Andersen. It was always decided against the employer no matter what the facts are.

Mr. Resner: I wouldn't say that.

Mr. Madison: Why should we be asked to concede something you deem to be in your favor in this particular instance when we tried to contend that for God knows how long before?

Referee Roden: It seems to me pretty plain when you cancelled the contract, abrogated the contract, no

further contractual relations existed; and, apparently, that cancellation was accepted by the union.

Mr. Madison: It was sure plain to me in 1938, but I didn't get very far.

Mr. Resner: The evidence is in, Mr. Examiner, along that line.

Of course, we can also agree no strike has been declared against the Alaska Packers, against any of the companies, and that immediately before the season would normally have started this year there were no cannery workers or any other workers employed in the various plants in Alaska with the members of the Alaska Salmon Industry, Incorporated. Do you follow me?

Mr. Madison: Now, are we going to take some more evidence or what? I have got through with all I have to offer here.

Mr. Resner: The only point is this. I am just trying to see whether we can get some of these issues cleared up? [199]

Mr. Madison: You have asked about fifteen witnesses whether there was a strike or not.

Referee Roden: Well, there was no strike.

Mr. Resner: The only point is this, whether immediately prior to the time this season would normally have started whether or not there were workers, members of a class or group represented by Local 5, who were employed in the various Alaska Plants of the San Francisco Operators?

Mr. Madison: That is what Mr. Roden wanted us to stipulate to, and I don't know whether they are employed or not.

Mr. Resner: They weren't employed January, February, March, or April of this year.

Mr. Madison: The Labor Board wouldn't have held they weren't employed.

Referee Roden: There is no evidence they were employed. The season came to an end last Fall, and that terminated all employment so far as evidence before this tribunal is concerned.

Mr. Resner: That is right. I will proceed with Mr. Rendon.

MR. VINCENT RENDON,

resumed and testified as follows:

Redirect Examination

By Mr. Resner:

Q. You have been sworn, Mr. Rendon, and testified you were a member of this Union, Local No. 5. You worked in Alaska, did you not?

A. Yes, sir.

Q. Where did you work?

A. Alaska Salmon Company.

Q. Which Plant? A. That is B.B.

Q. Bristol Bay: A. Bristol Bay.

Q. And at the end of the season?

By Referee Roden:

Q. What place was that?

A. I don't know what they call the place, but they used to call it Diamond-BB.

Mr. Woolf: There is another name for it too, Peterson's Point.

(Testimony of Vincent Rendon.)

By Mr. Resner:

Q. What time did the season come to an end there, so far as you were concerned?

A. It is August, 1939.

Q. And you returned to San Francisco at that time? A. Yes. We returned by that time.

[200]

Q. You didn't receive any pay from your employer between the end of that season and the present time, did you? A. No.

Q. And you have made application for benefits under the Alaska Law?

A. I did make application for five weeks now.

Q. Are you on strike against the Company?

A. No.

Q. You haven't worked at all this season in Alaska? A. No.

Q. And you are ready, willing, and able to work, are you? A. I am willing to work.

Q. On what conditions?

A. On the conditions of 1939.

Q. When you say 1939 what do you mean?

A. In San Francisco.

Mr. Resner: That is all.

Mr. Madison: No questions.

By Mr. Oliver:

Q. Have you applied for work in California?

A. This unemployment compensation.

Q. Have you tried to get a job?

A. Yes. But my line of work is in Alaska.

(Testimony of Vincent Rendon.)

Q. What do you do between the time you usually come back from Alaska and the time you go back to Alaska next year?

A. Well, I wait for the season again.

Q. You don't do any work at any time?

A. Well, I can't find any job here.

Q. What did you do between, say, August of last year and May of this year?

A. Well, I hung around our union hall.

Q. Did you apply for work? A. Yes, I did.

Q. Did you apply to the Alaska Commission for work? Did you state to the Alaska Commission that you were ready, willing, and able to work?

A. Yes.

Q. Had you registered for work?

A. Yes.

Q. Have you had an offer for a chance to work for anybody else? A. No.

Q. Do you receive any compensation from the union? A. Yes.

Q. Are you receiving compensation from the union now? A. No.

Q. When did your compensation from the union stop?

A. It stopped about a month ago, but they paid me only a dollar a day. That is, enough to pay my car fare.

By Mr. Resner:

Q. That is, during the time of the negotiations?

A. Yes. [201]

(Testimony of Vincent Rendon.)

Q. As a Committeeman?

A. As a Committee.

By Mr. Oliver:

Q. You don't receive any compensation other than carfare?

A. Well, they pay me only dollar, or sometimes only 50c, because we are not operating as a big corporation.

Q. Did you go to Seattle? A. Yes.

Q. Were you compensated while you were in Seattle?

A. Yes. They give me room and board.

Q. You were last employed by your union, were you not, in California?

A. No, they never pay me no wages. They pay me only carfare, or something, for my lunch.

Q. Well, under a lot of these up in Alaska when you work for the Alaska Salmon Company the food that you get is included amongst your compensation?

A. Yes.

Q. Now, is that any different when the union pays you? A. No.

Q. For your food?

A. Yes. In Alaska they told me my food is a dollar. That is what my union, they give me, a dollar a day, too.

By Mr. Resner:

Let me interrupt here to let the record show the claims as rejected by the Alaska Compensation Commission exclude compensation for the food; and,

(Testimony of Vincent Rendon.)

though that is supposed to be a part of the compensation in Alaska, the Commission is now allowing benefits for it.

Mr. Oliver: I was only interested in the fact whether he was employed in California and who his last employer was?

Mr. Resner: Making the point whether this car fare is compensation or not?

Mr. Oliver: The Act apparently requires that he be last employed by the Alaska Cannery Company.

I have no further questions.

By Mr. Resner:

Q. Were you employed by the union?

A. No.

Q. Were you a paid official of the union?

A. No.

Q. This money you are getting, it represented merely carfare?

A. Merely carfare and my lunch.

Q. In other words, expenses for negotiations with the union?

A. Because the unions—we can not afford to pay no big wages at all.

Q. Were you paid any wages?

A. No wages at all.

Q. Then you weren't a paid employe of the union?

A. No. [202]

Mr. Oliver: He has already testified, Mr. Resner, he had his food paid and his travelling expenses paid.

Mr. Resner: Of course, that is not wages. That doesn't make a man an employe.

(Testimony of Vincent Rendon.)

Mr. Oliver: You read under this Act wages consist of any compensation, regardless of form.

Mr. Resner: Well, that is all I have. No further questions.

By Mr. Oliver:

Q. Have you been assigned to work at any cannery in Alaska this summer? A. No.

Q. Did the unions make up any list of which they assigned various men to various canneries in Alaska?

A. They will assign me to the canneries where they will operate this year, but there was no operation at all. That is why I didn't have no job.

Q. If the Alaska Packers had operated this year and the Alaska Salmon Company had not, would you have been? And the Red Salmon had operated? Would you have been assigned to the Red Salmon or the Alaska Packers?

A. I believe that—I don't know where they will assign me, but I put up my application for any cannery that is open for 1940.

Q. Do you or do you not know, or is it or is it not true, that you were assigned to work at a cannery in Alaska other than that of the Alaska Salmon Company? A. I don't know.

By Mr. Resner:

Q. Well, did the union assign you to any cannery?

A. They will assign me in any cannery that is open.

(Testimony of Vincent Rendon.)

Q. But the assignments aren't made until the agreement is signed? Isn't that correct?

A. Yes.

Q. And no agreement was signed and, therefore, no assignments made. Is that also true?

A. Yes.

By Mr. Oliver:

Q. Now, you worked for the Alaska Salmon Company, as you testified I think, in 1939?

A. Yes.

Q. Where did you work in 1938?

A. In Alaska Packers.

Q. Where did you work in 1937?

A. Alaska Packers.

Q. Where did you work in 1936?

A. In Red Salmon.

Q. When was the last time before 1939 that you worked for the Alaska Salmon Company?

A. That is August 19th. That is the day. [203]

Q. What year? A. 1939.

Q. Before that?

A. I did not work Alaska Salmon. I work for Alaska Packers in 1938.

Q. You think, do you not, if there had been an operation by the other two packers you would have worked in Alaska this summer?

A. That depends on my union? They would assign me.

Mr. Resner: The witness has already answered the question, he doesn't know. Assignments aren't made until after the contract is signed.

(Testimony of Vincent Rendon.)

By Mr. Oliver:

Q. Was there any notice posted in the union hall if you didn't have a regular agreement with the employers this year you would get unemployment insurance from Alaska?

Mr. Resner: I object to the question as being completely incompetent, irrelevant and immaterial. I don't see what point it makes. Of course they are entitled to benefits. If the union posted notices it should have posted notices to apprize the men of their rights.

A. (Mr. Rendon) I think they have a notice that every member that they are not working, well, we can file an application for the unemployment compensation.

Mr. Oliver: No further questions.

Mr. Resner: That is all, Mr. Rendon.

I want to make this offer of proof. That I will call all the other claimants whose names are on file here and they will testify substantially as Mr. Rendon has, excluding the testimony concerning union activities.

Mr. Madison: I won't stipulate to that.

Mr. Oliver: I won't either. We can't.

Mr. Madison: You said there was a labor dispute now.

Mr. Resner: I never said there was a labor dispute. You said there was a labor dispute.

Mr. Madison: If you want to test all your applicants for their qualifications or disqualifications go ahead and test them. I am not going to stipu-

late to their qualifications and disqualifications. I don't know anything about them at all.

Mr. Resner: The only point is this. They worked in Alaska last year. That they are not on strike this year. [204]

Mr. Madison: I don't know if they have worked. I haven't checked those lists. You haven't offered them to me.

Mr. Resner: I believe I offered the claims. They are in evidence, all of the claims that have been made so far—the names of the claimants—those names offered and rejected are in evidence.

Mr. Oliver: But the Claims, themselves, are not in evidence, are they?

Referee Roden: No, they are not.

Mr. Resner: No. They are in the hands of the Commission.

Mr. Oliver: In the beginning of this proceeding one of my objections was and still holds good—we don't know yet what the Claims are or who the Claimants were?

Mr. Resner: We can get them from the Commission. They are on file with the Commission.

Mr. Madison: The answer is no. We won't stipulate to it. If there is something else about this man's testimony, I don't recall all exactly he testified to, if there is something else about it that you want to stipulate to let me know. Reduce it and I will tell you whether I will or not, but I am certainly not going to testify to all the qualifications of all the Claimants. I don't even know who filed or what their claim is.

Mr. Resner: It is merely this. All the members of the union who have filed claims would testify that they worked in Alaska last year. That they are not working this year. That they have filed claims. That they are ready, willing, and able to work on the basis of the 1939 San Francisco agreement. That they are not on strike against the Company.

Mr. Madison: I have no information on that whatsoever.

Mr. Resner: I know that. I am merely asking you whether or not you will stipulate to the fact these other witnesses I have put on will so testify, simply as to my stipulation Mr. Barthold will testify to your offer of proof.

Mr. Madison: Absolutely no.

Mr. Resner: Then, Mr. Referee, I suppose I will have to call all these hundreds of Claimants.

Referee Roden: All right. Let's proceed.

Mr. Oliver: It is true, is it not, Mr. Resner, those lists are of ones who have filed claims and whose claims were rejected prior [205] to this hearing?

Mr. Resner: That is right.

Frank Aragon? (No response)

Sing Tom?

Quong Chin?

Sam You?

Alfonso L. Plasabas?

If any of the members of the Union hear me call their name I want them to come forward and take this witness chair.

Philip R. Olita?
Mamerto Diangzon?
Vincente Osorio?

MR. VINCENTE OSORIO,

SS.A. No. 567-16-7645, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Your name is Vicente Osorio, Social Security Number 567-16-7645? A. Yes, sir.

Q. Where did you work last year during the Alaska Salmon season? A. In Chignik.

Q. Who for? What Company?

A. Alaska Packers.

Q. And you have made a claim for unemployment insurance? A. Yes, sir.

Q. This year? A. Yes.

Q. Are you on strike against the company?

A. No, sir.

Q. Are you ready, willing, and able to work?

A. Yes, sir.

Q. On what conditions? A. 1939.

Q. 1939 what? 1939 San Francisco Agreement?

A. San Francisco Agreement.

Mr. Resner: That is all.

Mr. Madison: Just a second. Is that all you want to show by all these witnesses?

Let me ask you this? Would a stipulation be satisfactory to you that each of the Claimants, whose

names have been introduced in evidence here, would testify as this man has testified? But that such testimony shall not be deemed to be controlling over: One, of the fact that they have or have not filed claims, which will appear as a matter of record in the Unemployment Commission in Juneau; and, two, as to whether they did or did not work for one of the canneries last year will appear on check with the company's payroll. [206]

Mr. Resner: Is that your question, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: The answer is yes.

Mr. Madison: Then, I would like to have that written up and take a look at it and I think, quite probably, we could stipulate to that. And that will avoid calling about two thousand witnesses.

Mr. Resner: That is right, Mr. Madison. That is just what I asked for five minutes ago.

Mr. Oliver: Just one question. You asked the question, I think, that they are ready, willing, and able to work? And you say under 1939 conditions?

Mr. Resner: Of San Francisco.

Mr. Oliver: Now, if you are coming under the Alaska statute and trying to qualify these matters they have to be ready, willing, and able to work in any suitable work; and it doesn't have to be on 1939 conditions.

Mr. Resner: That is up to the Commission to decide.

(Remarks were made off the record.)

Mr. Resner: Well, I am going to offer to prove by each Claimant whose claim is on file at the present time before the Commission, whose names are in the records, that they are members of Local 5 of the Alaska Cannery Workers Union. They have filed claim they are not on strike against the company for 1940 Alaska season. They are ready, able, and willing to work for the 1940 Alaska season on the basis of the 1939 San Francisco agreement.

Mr. Madison: And that stipulation of Counsel for the Canners to this effect would not be deemed to waive or adversely affect any right to raise any other disqualification that may be contained in the Act in the event it should be decided that no labor dispute exists.

Mr. Resner: I certainly should stipulate you would not be precluded from raising any substantial objection at any time you wanted to.

Mr. Madison: Or the Commission, either, of course.

Mr. Resner: Certainly. Because the only dispute here is a labor dispute, as I understand it, as the Examiner stated when we first started this hearing?

(Thereupon, at the request of Counsel, copies of that portion of the transcript from the top of page 335 to the end of the last previous sentence were made by the Reporter and delivered to Counsel.) [207]

At 12:00 M the hearing was adjourned, to reconvene at one o'clock.

Wednesday Afternoon Session

At 1:30 P.M. the hearing was reconvened by Referee Roden.

Referee Roden: All right, Gentlemen, come to order.

Did you look at that, Mr. Madison?

(Referring to the copy of that portion of the transcript appearing on page 335, which was made upon adjournment at 12:00 o'clock.)

Mr. Madison: Yes, it is entirely satisfactory to us.

Mr. Resner: Yes.

Referee Roden: I haven't seen it. Is it satisfactory?

Mr. Resner: As far as I am concerned, it is all we offered to prove by our witnesses.

Mr. Madison: I believe this means these witnesses if called would testify to that?

Mr. Resner: That is all.

Mr. Madison: That amendment is entirely satisfactory.

Referee Roden: Well, we will admit it is evidence then. Is there anything further, Gentlemen?

Mr. Resner: It says ready, willing, and able to work for the 1940 Alaska season.

That is all.

Mr. Madison: I would like at this time to introduce in evidence the balance of those minutes which you said you wanted to introduce a certain part of it. I thought they all ought to be introduced, and want to introduce the balance of them.

Referee Roden: Exhibit 15? Well, I guess that is admitted, of course, as to any minutes that are relevant at all.

Mr. Resner: Are you referring to the comments about the unemployment insurance?

Mr. Madison: I am referring to the whole thing, any part of the minutes that tend to show the offer made the 29th was not a bonafide offer.

Referee Roden: Any part of the minutes that are relevant.

Mr. Resner; The only point for which I offered these minutes is already in the record, and I see no relevance to the balance of the minutes.

I object on that ground.

Referee Roden: Objection overruled. [208]

I have nothing further. Anything further, Gentlemen?

Mr. Madison: Nothing further.

Referee Roden: I understand you Gentlemen are going to submit a brief on this question of whether a labor dispute existed?

Mr. Resner: Yes. Can we fix a time limit?

Referee Roden: Yes, how many days do you want?

Mr. Oliver: Is that limited to the labor dispute question solely?

Referee Roden: If you want to touch upon any other point, that is all right, that you might think is involved?

Mr. Madison: I presume you will enter a brief and we will have an opportunity of replying to it?

You are the Claimant and the Claimant is usually the moving party.

Mr. Resner: We are going to file a brief, Mr. Madison. My thought is this, however. Both parties should file briefs simultaneously and both parties reply to the other parties brief.

Mr. Madison: Frankly, the issues of the case were outlined somewhat briefly by you in your opening statement. They acted in such a way you seek to claim whatever you call it didn't apply to this particular situation. In my mind, if I filed a brief now I would say it was perfectly obvious to everybody it was a trade dispute.

You have got some other theories about this thing. Let's answer them in an intelligent way; and then if you want to file an answer to my brief it is all right, of course.

Mr. Resner: Of course, the question of time is very important.

Mr. Madison: I will agree to reply in ten days.

Mr. Resner: I wouldn't want any more than ten days. Today is the 19th. I wouldn't take any more than ten days; and, I think, the Respondents here should have five days after that?

Mr. Madison: We have ten and you have five. You want ten, we have ten, and then you want five, is that right?

Mr. Resner: Is that what you want, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: I think that is all right, with this

exception, however, if I can get my brief in within a period of, say, three or four days I would like to have some assurance you people would try to do the same? [209]

Mr. Madison: We will be very happy to.

Mr. Resner: With that understanding, it is all right.

Mr. Oliver: Is there a title?

Referee Roden: I told the Reporter to put the title in the matter of Frank L. Aragon, et al, Members of Cannery Workers Union, Local No. 5, San Francisco.

All right, Gentlemen. I thank you for your kind attendance.

(Remarks were made off the record.)

At 1:45 p.m., Wednesday, June 19, 1940, the hearing was adjourned. [210]

Before the Unemployment Compensation Commission of Alaska

In the Matter of

FRANK L. ARAGON, et al.

MEMBERS OF CANNERY WORKERS UNION LOCAL NO. 5, SAN FRANCISCO,

Claimants for Unemployment Benefits.

DECISION BY REFEREE

Statement of Case. The claimants having been disqualified by an initial determination of the Unem-

ployment Compensation Commission from receiving unemployment benefits for eight weeks on the ground that their unemployment was due to a labor dispute in active progress at the establishment at which they were last employed, under the provision of section 5 (d) of the Alaska Unemployment Compensation Act, the Alaska Commission appointed a Referee to take such evidence as might be offered by the claimants and their former employers, and to make findings of fact and conclusions thereon.

Both parties appeared before the Referee and submitted evidence in support of their contentions, the claimants maintaining that no labor dispute existed while the employers took the opposite stand.

The claimants are all members of Alaska Cannery Workers Union Local No. 5, of San Francisco, a local union of the United Cannery, Agricultural, Packing and Allied Workers of America, hereinafter designated the "Union"; this union is affiliated with the Maritime Federation of the Pacific.

All the claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska); and by the Red Salmon Canning Company, the Alaska Salmon Company and the Alaska Packers Association in Bristol Bay. These will hereinafter be designated as the "Employers." All the claimants reside in the San Francisco Bay Region and the Employers operate out of San Francisco.

The Alaska Salmon fishing and canning industry is a seasonal one, extending approximately from April through September of each year. The Commission has promulgated regulations wherein, for the purposes of the Act, the beginning and closing days of the salmon season for various areas in Alaska are fixed. At Kodiak Island (Karluk) the season is [211] from April 5th to September 5th; at the Alaska Peninsula (Chignik), from April 1st to September 10th; and at Bristol Bay, from May 5th to August 5th (Benefit Regulation No. 10).

From the inception of the industry in Alaska, the salmon fleets carrying supplies, fishermen, and cannery and other workers have sailed from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers have for many years operated under agreement with the Alaska Fishermen's Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union Local No. 5, representing claimants herein, entered into their first agreement in 1936. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and the parties would then proceed to negotiate a new agreement.

The 1939 agreement was terminated in accordance with its provisions; correspondence was then exchanged looking toward the negotiation and conclusion of an agreement covering the employment of the cannery workers and the terms and conditions of employment for the 1940 season.

Negotiations were entered into; on April 3, 1940, and while these negotiations were pending, the Employers notified the Union that if no binding contract were concluded by April 10th, no operations would be undertaken at Karluk during 1940; if no binding contract were entered into by April 12th, no operations would be undertaken during 1940 at Chignik, and later in the course of the negotiations, the Employers informed the Union that if no binding agreement were reached by May 3rd, 1940, no operations would be conducted in Bristol Bay during the 1940 season. No agreement was reached with reference to any of the plants referred to and the negotiations culminated in a deadlock.

When the "zero hour" fixed by the Employers came, the Union was notified that no operations would be carried on at any of the Employers' plants at Karluk, Chignik or Bristol Bay during 1940.

As a result, the claimants became separated from their employment on April 10th, April 12th, and May 3rd, 1940, respectively, each with reference to his last place of employment; they became thus separated from their employment by the termination of a contract between them and their 1939 Employers and their inability to negotiate a new contract for 1940 operations. [212]

The Examiner, upon initial hearing, ruled that the unemployment of the claimants was due to the existence of a labor dispute in active progress at the plant of their former Employers and, in conformity to section 5 (d) of the Alaska Unemploy-

ment Compensation Act, held each of them disqualified to receive benefits for a period of eight weeks immediately following the opening date of their seasonal employment as determined by the Commission in Benefit Regulation 10.

From the initial determination the claimants appealed, a Referee was appointed by the Alaska Commission to take proofs and make findings and decision.

The Employers insist that their plants formerly operated by them were not in operation during the 1940 canning season on account of the existence of a labor dispute in active progress at their establishments; the Union contends that its members are unemployed because the operators refused to negotiate a new contract; that they arbitrarily terminated the negotiations; that the negotiations were not carried on on their part in good faith; that they offered to go to work during the 1940 season under terms and conditions of their 1939 contract and that they, the Employers, at no time intended to operate during 1940 due to stringent fishing regulations imposed upon them by the Bureau of Fisheries, and that this condition does not constitute a "labor dispute in active progress at the establishment of their last employers", within the meaning and purview of the Alaska Unemployment Compensation Law.

FINDINGS OF FACT

From a consideration of the evidence submitted

at the Hearing, the Referee makes the following Findings:

1. That the 1939 contract between the Union and the Employers was terminated in the month of November, 1939, and negotiations for the 1940 season contract commenced in the month of March, 1940.

There were no employees, members of the Union, employed at any of the Employers' plants immediately prior to the date of the opening of the 1940 season and none had been employed since the termination of the previous season, to wit, in September, 1939, so that when negotiations for 1940 were commenced, the relation of employer-employee did not exist between the parties to this controversy.

2. Early in 1940 the Employers organized a corporation, the Alaska Salmon Industry, Inc., for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon [213] canners; it opened an office in Seattle to conduct negotiations with the labor organizations representing employees of its members, particularly those operating out of Seattle and Portland; it also opened an office in San Francisco to carry on similar operations for the three salmon canners operating from there, to-wit: Alaska Packers, Red Salmon Company and Alaska Salmon Canning Company, the three operators concerned in this hearing; the Employers delegated to it authority and functions they had theretofore exercised directly.

3. On March 6th, 1940, Alaska Salmon Industry, Inc. notified the Union that it represented the San Francisco Salmon Canners, herein designated

as the "Employers" for the purpose of negotiating a contract for the 1940 season and requested meetings for that purpose.

On March 9th, the Secretary of the Union notified the Employers that a scheduled meeting for March 12th had been cancelled for the reason that the Union would not enter into 1940 negotiations until after all disputes between its members and the Canners, which had arisen during the 1939 season, had been adjusted.

On March 27th, the Union presented its proposed 1940 agreement; a meeting was held at which the offer was discussed; in it the Union raised its demands above those it had enjoyed under the 1939 (San Francisco) agreement and the 1939 San Francisco agreement was more favorable to the Union that the 1939 Seattle agreement which had been negotiated between the Canners operating out of Seattle and Portland in the same sections of Alaska in which operate the "Employers" concerned in this hearing. The "Seattle 1939" agreement had been negotiated between said Canners and other locals of the Cannery Workers Union operating out of Portland and Seattle.

On April 1st or 2nd, the Union forwarded its letter to the Employers withdrawing its proposed 1940 agreement and stating that all future negotiations concerning wage scales were transferred to Seattle where its representatives would meet, and did meet, with the Employers. This announcement

was hailed by the Employers with satisfaction; their purpose being to negotiate a coast-wide agreement between all cannery operators and the Unions so that one uniform agreement should govern them all; such a coast-wide agreement would put the San Francisco operators on an even competitive footing with the Seattle and Portland operators. The San Francisco operators hoped to cut the San Francisco Union demands which it had been required to pay for a number of years, [214] down to the Seattle Union demands, while the San Francisco Unions expected to improve their position under the agreement expected to be negotiated in Seattle; in other words, both parties to the controversy hoped to gain by the coast-wide agreement to be negotiated in Seattle.

On April 3rd, the Employers advised the Union that if no satisfactory agreement were reached between them and all unions concerned by April 10th, operations at Karluk would not be undertaken and if no agreement were reached by April 12th, the operations at Chignik would be abandoned for 1940; this letter contained specific offers to all the Unions concerned by the Alaska Packers who were the only operator concerned in the Karluk and Chignik regions. This letter, in part, is as follows:

April 3, 1940.

To the Unions Concerned:

We are advised by Alaska Packers Association that if that Company is to operate at Karluk and

Chignik during the 1940 season, the S.S. Chirikoff must sail from San Francisco not later than April 17, 1940. Since it is necessary to prepare and make purchases for this expedition, if it is to be undertaken, all arrangements for employment for Central Alaska must be consumated on or before April 10, 1940.

If agreements for employment are not completed by that time, it will be impossible to attempt to operate at Karluk, and that operation will not be undertaken.

We are advised further by Alaska Packers Association that if there is no operation at Karluk, but an expedition is outfitted for Chignik only, the sailing date for the S.S. Chirikoff can be postponed to April 21, 1940, and the final date for making preparation to April 12, 1940.

Each of these dates represents the latest possible time that can be set, and no leeway is allowed for unfavorable factors of weather, breakdown, etc.

We are authorized to submit this information to you upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken. The experience of past years has proven that unless a clear declaration of intention is announced by operators and unions alike, last minute demands, negotiated under penalty of great losses to the operators necessarily resulting from delayed expeditions, have

placed an unfair burden on attempted operations. It is essential that we avoid a repetition of this procedure in 1940.

Because certain delays have been experienced already, we believe it is proper to outline the progress of negotiations to date.

Prior to March 1, 1940, all unions having contractual relations with salmon canners operating out of San Francisco, were advised of the termination of the 1939 agreements and of the necessity of negotiating new agreements for the 1940 season.

On March 4, 1940, offices were established in San Francisco by Alaska Salmon Industry, Inc., and on March 8, 1940, a letter was addressed to each union signed by the San Francisco operators, certifying that Alaska Salmon Industry, Inc., was authorized to represent these operators in all negotiations for the 1940 season but without representation that there would or would not be operation.

[215]

This letter of authorization was prepared at the request of the unions affiliated with the Maritime Federation of the Pacific.

On March 6, 1940, these unions advised the office of Alaska Salmon Industry, Inc. that no negotiations would be undertaken without such authorization, and that even if such authorization existed, no negotiations would be undertaken by any union as that group until all prior claims of all unions of the group were settled to the satisfaction of the unions concerned.

In reply to this declaration, Alaska Salmon Industry, Inc., advised each union affiliated with the Maritime Federation of the Pacific as follows on March 8, 1940.

"Enclosed herewith is a statement from Alaska Packers Association, Alaska Salmon Co., and Red Salmon Canning Company, indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of previous collective bargaining agreements.

"Should you desire to present any claims arising out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Matthews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of these claims, it is the decision of these companies that

they should follow such disputed matters through their final settlement.

"This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you therefore, please present any such claims immediately to the parties above named for further discussion.

"Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to forfiture of a right to a full hearing under threat of a refusal to bargain.

"Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication."

From March 8th, until March 19th, no negotia-

tions were conducted with any of the Unions affiliated with the Maritime Federation of the Pacific because of their refusal to meet, but on March 19, 1940, the Alaska Fishermen's Union presented to the Alaska Salmon Industry, Inc., a series of demands for changes in physical equipment in Alaska, together with certain contract changes. This union stated that specific replies concerning the requested physical changes would be required before any further negotiations would be carried on. Since that time, two further meetings have been had with the Fishermen's Union to discuss all matters presented by its representatives. [216]

On March 21st, the Marine Engineers Beneficial Association made an appointment for a meeting, but failed to appear, and despite our request for another appointment, none has been made.

On March 27th, meetings were had with representatives of the Marine Cooks and Stewards and with the Alaska Cannery Workers at which preliminary demands for contract revisions were presented. Further meetings to negotiate these demands were held on March 29th. We are now advised by the Alaska Cannery Workers Union, by letter dated April 2nd, that they are withdrawing from negotiations in San Francisco and will negotiate all agreements at Seattle.

Also, on March 29th, the representatives of the American Communications Association met with us for the first time and presented a proposal for a tentative agreement, and on April 2nd, the Marine Firemen presented their demands.

Negotiation meetings and conferences have been held with the Masters Mates and Pilots, the Sailors Union of the Pacific, the Carpenters Union and the Blacksmiths Union. To date the two Machinists Unions have declined to meet for purposes of negotiation.

On the basis of this record and because of the pressure of time heretofore indicated, we deem it necessary to state in detail the proposals and counterproposals of the operators covering the work claimed by each union, with the understanding that unless existing differences can be adjusted or negotiated before the dates hereinabove mentioned, the respective operations cannot be undertaken, despite our willingness and desire to operate if fair conditions are established.

In general, each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have amounted to such an extent that no further increases can be granted and further, that certain conditions, particularly those involving over-time claims of certain unions, must be corrected if the industry is to be enabled to continue in business. Upon this general premise, the operators hereby propose working agreements and conditions which they submit to be fair. Wherever changes from 1939 agreements are offered, the reasons for such changes are set forth in detail.

In making the following proposals and counter proposals, the operators desire to emphasize that

they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.

The specific proposals hereinafter listed are intended to cover possible operations in Central Alaska only, and not intended to apply to Bristol Bay. The possibility of operation at Bristol Bay will depend upon negotiation of working agreements of a mutually satisfactory nature, and it is hoped that immediate discussions will be undertaken by the unions concerned.

Although the time factor, and the refusal of certain unions above listed to negotiate at all, will make it difficult to discuss in detail all matters of difference resulting from the proposals and counter proposals made herein, Alaska Salmon Industry, Inc., is ready and willing to meet immediately with any or all union representatives to attempt to negotiate all matters requiring clarification before the beginning dates specified. The canners desire to operate in 1940 if the unions will agree to conditions making such operations possible.

Herewith are the proposals and counter proposals of the operators.

1. Alaska Cannery Workers Union: The agree-

ment for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon and Washington. The San Francisco operators have authorized Alaska Salmon Industry, Inc., at Seattle, to represent them in those negotiations which are now in progress. In the event that satisfactory [217] agreements are reached for Central Alaska and those operations are undertaken or in the event that Bristol Bay operations are undertaken on an agreed basis, cannery workers will leave on the May 22nd expedition. Any employment, is, of course, contingent upon operation.

May we have your immediate reply to this communication.

Yours truly
ALASKA SALMON INDUSTRY, INC.
J. Paul St. Sure

To this letter the Unions sent the following reply:

San Francisco Bay Area District Council No. 2

April 8, 1940

Alaska Salmon Industry, Inc.,
230 California Street,
San Francisco, California.

Attention: Mr. J. Paul St. Sure

Dear Sir:

Please be advised that the unions affiliated to the

Bay Area District Council #2 of the Maritime Federation of the Pacific have, in meeting, taken your letter of April 3rd under consideration and have instructed me to forward the following information to your office.

The following motion was made and carried:

"That a letter be sent to the Alaska Salmon Industry, Inc., informing them that their proposals as submitted to the various unions affiliated to the Council are unacceptable to all organizations." And further,

"That all organizations, with the exception of one, namely, the Machinists, stand ready and willing to meet and negotiate on the basis of the proposed agreements that they have submitted."

I wish to point out further that it was the unanimous opinion of all delegations that new contracts can be negotiated if an honest effort to reach such an accord is made by the representatives of the Companies. It was their opinion that the action taken by the Companies in designating lawyers to conduct their negotiations, and said lawyers according to their own statements know nothing of the Salmon Packing Industry, does not make for a proper understanding and can only result in further complicating any amicable adjustment of differences.

In previous years negotiations were conducted by practical common sense men of the industry and agreements were successfully concluded. In view

of this, the Committee was of the opinion that the injection of the attorneys as negotiators can only be interpreted as an expression of bad faith on the part of the Packers.

The joint negotiating committee also went on record as requesting an answer to our letter of March 1st, in which we stated our position in reference to not sailing this season with Doctors Peterson, W. W. Peterson, and Schranke.

You may rest assured that the negotiating committee of the various unions is at your disposal whenever your committee is desirous of meeting with them and discussing the proposals that they have submitted.

I would like to suggest that due to the lateness of the time and because it will be necessary to have reached tentative agreements with all Council unions before any agreements will be signed, that such [218] negotiations proceed at the earliest possible time.

Very truly yours,

BAY AREA DISTRICT COUNCIL #2 MARITIME FEDERATION OF PACIFIC

REVELS CAYTON

On the same day, April 8th, the Employers telegraphed the Union they were ready to further negotiate.

A meeting was held on April 10th. At this meeting, the Employers asked that the Union execute a

memorandum agreement to be effective in the event an agreement could be reached with a number of other Unions with whom negotiations were then pending; this memorandum was intended to bind the Union to abide by any agreement that might be negotiated in Seattle. The Union refused to execute such an agreement, saying it would await the outcome of the Seattle negotiations.

No agreement having been reached between the parties by April 10th and 12th respectively, the operations at Karluk and Chignik by the Alaska Packers were abandoned for the 1940 season; upon request, the Employers, in writing, so notified the Union under date of April 22, 1940.

4. On April 26th (and after various meeting had been held) the Employers addressed a letter to the Union urging the necessity of action if an agreement to cover Bristol Bay operations was to be arrived at before the final date fixed, May 3rd.

On April 27th, the Employers, by letter, requested the Union to execute a memorandum agreement to cover Bristol Bay operations, as they had previously requested one for the Karluk and Chignik operations in view of the fact that the negotiations in Seattle had up to that time not resulted in a firm agreement.

A number of meetings were held and communications exchanged between the Employers and the Union between April 27th and May 1st. On May 1st, a meeting was held at which the Employers requested the Union to execute a memorandum to pro-

vide that in event no agreement were reached in Seattle that in 1939 Sattle agreement would be the basis for their compensation and working conditions during the 1940 Bristol Bay operations; the Union countered by insisting that if no new agreement were negotiated in Seattle, the San Francisco 1939 agreement should be the basis for their 1940 compensation and working conditions. At the last minute attempts were made to come to an understanding; the Union insisted upon a renewal of their 1939 agreement, while the Employers insisted upon the acceptance [219] by the Union of the so-called "1939 Seattle agreement", the provisions of which were less favorable to the Union than the 1939 San Francisco agreement.

(Eventually a new agreement was negotiated at Seattle but this expressly excluded operations out of San Francisco and only covered Cannery Workers locals from Seattle and Portland.)

No agreement having been reached between the parties by midnight of May 3rd, all Bristol Bay operations were abandoned by the Employers.

While the aforesaid negotiations were progressing, the Employers made the preparations usually made by Central Alaska and Bristol Bay operators in anticipation of their annual operations in those waters; they purchased large quantities of cans, can-ends, rope, cotton and linen webbing, lumber, and other supplies and equipment to the value of about four hundred thousand dollars and they put their ships in readiness for their usual annual trips;

in anticipation of their 1940 operations they declined to charter their ships and it was their intention to use the same number of them in their 1940 operations as had been used in 1939, with the exception of one major ship.

There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations.

Counsel for the Union, in their brief express the opinion that the Employers did not negotiate in good faith, that they never intended to operate in 1940, that the negotiators simply went through the form and that since there was to be a definite curtailment of fishing the Employers used that as a lever to depress wages and conditions of the Union to the point where it would mean surrender of much that had been gained by it during years of struggle.

The opinion is not founded in fact. The grounds upon which it rests, as shown by the evidence, are because:

(a) The Employers formerly negotiated the annual agreements by their executive officers who were experienced cannerymen while this year, under the new set-up they were negotiated by Salmon Industry, Inc., acting through two representatives, one of whom is an attorney, the other an experienced businessman;

(b) on account of the 1940 restrictions on fishing, imposed by the Bureau of Fisheries, the 1940 operations were expected to prove unprofitable and

the Employers had an opportunity to charter their cannery ships at profitable rates; and [220]

(c) during the two months of negotiations, only 18 meetings were held in Seattle and four in San Francisco.

None of the grounds urged impresses me. The fact that the wage negotiations were transferred from San Francisco to Seattle left little to be discussed at the latter place; it was admitted that after this happened only matters of minor consequence were considered in San Francisco.

In view of the uncontradicted evidence of the Employers (except Alaska Salmon Canning Co.) to the effect that they made practically the same preparations for the 1940 season as had been done in former years, there was left little room to doubt their good faith.

The evidence shows that the Alaska Packers, held in readiness their fastest steamer for their contemplated Karluk and Chignik operations; they purchased supplies and equipment, to be used in Karluk, Chignik and Bristol Bay canneries to the amount of nearly four hundred thousand dollars; these supplies (at the time of the hearing, June 19th, 1940) were still in their warehouses in San Francisco "for the inspection of anybody who desires to see them"; (see Tr. pg. 266) they purchased cans, can ends, lumber fibre boxes, caterpillar trucks, piling, linen and cotton webbing, rope, box shooks, laundry equipment demanded by the Unions, blankets, motors and other items of equip-

ment all of which, "are on hand and available for anybody to examine who wishes to." It was admitted that the Alaska Packers intended to carry on their 1940 operations with one less major vessel than had been used during previous seasons.

The manager of the Red Salmon Company testified:

"Q. Did your company want to go to Alaska?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation in 1935; our Board of Directors instructed me to prepare for an operation. We made every effort possible to go to Alaska this year. In the Spring of 1940 we had opportunities to charter our two vessels used in our Alaska operations on a favorable basis. We did not accept such offers to charter; about January, our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations; we did entertain one charter with the stipulation that they be back by the middle of April, and we, as a part of the terms insisted they put up, I think, a hundred thousand [221] dollar bond, or something like that, for any delay at all; but that was one of the reasons the charter was not accepted."

"At the request of the Unions, we made changes in our ship for that particular voyage (to Alaska) and installed equipment which would not have been installed just to charter; we went ahead on the defi-

nite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd: we decided upon the outfitting for our two canneries; how many cases we would prepare to pack; we arranged credits at the bank for the amount of money we thought we might need; we drew up a complete budget as to any improvements that were needed; we bought a power scow which is now in Seattle; we bought our nets; cans; bought casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment we bought many other things—we were prepared and would have gone had agreements been made by the date set." (Tr. pg. 292 et seq.)"

"On cross examination the witness stated that his company expects to use supplies and equipment purchased during the 1941 season, "if we can't sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can, the curtailment was not a factor in our negotiations with the Union * * * we were going under full operations."

It is common knowledge in Alaska and elsewhere that a cannery operator will not purchase tin cans, tin can ends (tops and bottoms), and fishing gear, unless he intends to use them during the season in which they are bought, nor will any businessman invest his capital in equipment which he does not expect to use in the ordinary course of his business.

There is no evidence to substantiate the claim that the Employers acted in bad faith during the negotiations; they were anxious and determined to reduce their operating costs while the Union insisted upon getting at least the same compensation and conditions as prevailed in 1939, pursuant to the San Francisco agreement.

Alaska Packers intended to carry on their usual operations at Karluk and Chignik during 1940 if an agreement had been reached and would have employed all its former employees there.

If an agreement had been reached between the Alaska Packers and the Union, one-third of the former employees of the Alaska Packers [222] in Bristol Bay would have become unemployed, on account of the curtailment prescribed by the Bureau of Fisheries and not on account of the possible existence of a labor dispute; which of their former employees would make up this one-third of unemployed cannot be ascertained from the record and, in the nature of things, could not be ascertained unless and until the actual "manning" of the Alaska Packers Bristol Bay plants had taken place.

The Red Salmon Canning Company determined to operate full capacity in Bristol Bay, due to the fact, as testified to by its general manager, "We knew that the Alaska Salmon Company was not going "to Bristol Bay during 1940" and we felt that, therefore, there would be no infringement upon the government curtailment program though we went on a full basis. We had every intention

of taking the same number of men this year that we took last year; in fact among the cannery workers we planned to take a few more." This company intended to make use of a portion of the fish that would have been allotted to the Alaska Salmon Company if it had carried on the operations in the Bay during 1940 and thereby expected to overcome the handicap of the curtailment program.

The Alaska Salmon Company, in 1939, and in previous years, had operated in Bristol Bay. It participated in the 1940 negotiations up to about the end of April when it gave notice to all interested parties that it had abandoned its plans and would not operate during that season. This decision was reached not as a result of inability to negotiate an agreement with the Union; it was reached prior to the termination of the negotiations and while failure to reach an agreement may have had its bearing upon the decision, the fact is fairly established that other reasons, not necessary to state here, induced it.

All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the "dead line" for the respective districts, to-wit,

For Karluk: April 10th, 1940.
For Chignik: April 12, 1940.
For Bristol Bay: May 3, 1940.

When the negotiations ended in a deadlock, the annual season for the respective operations as fixed by the Alaska Unemployment Compensation Commission (Benefit Regulation No. 10) had commenced at: [223]

Karluk: April 5th, 1940.

Chignik: April 1st, 1940; and was about to commence at Bristol Bay: May 5th, 1940.

To repeat, negotiations terminated with reference to:

Karluk on April 10th, 1940.

Chignik on April 12th, 1940.

Bristol Bay on May 3rd, 1940. [224]

OPINION AND DECISION

At the hearing before the Referee, all the parties, by their respective counsel, presented objections to the Initial Determination of the applicants' claims for benefits; by the initial determination, the Commission's Examiner found that the applicants were ineligible for benefits for a period of eight weeks after the date of the commencement of the 1940 season for the reason that a labor dispute was then in active progress at the plant of their last employer.

The objections are to the effect that neither the applicants nor the Employers had an opportunity to be heard at the initial determination.

When these objections were presented to the Referee, the following occurred:

Referee: In what respect are you damaged?

Mr. Resner (of counsel for applicants): Well, except that it puts the burden of proof upon us.

Referee: Not necessarily so, that is a matter that will be decided later on. Let me ask Mr. Madison, (of counsel for Alaska Packers and Red Salmon Company) in what respect are you damaged if we proceed now and do not continue this hearing?

Mr. Madison: I don't know that I am damaged in any respect. It would depend entirely upon how the matter proceeds. I am perfectly willing to proceed as long as it is understood we are not waiving any rights we may have to object later on.

Mr. Resner: Well, it is understood we are not.

Mr. Oliver (Counsel for Alaska Salmon Canning Co.): I am perfectly willing to go on that same basis."

Pursuant to stipulation and understanding with Counsel for the respective parties the sole question before the Referee is to determine whether or not the facts show that at the commencement of the canning season in 1940 a labor dispute was in active progress at the plants at Karluk, Chignik and in Bristol Bay being the plants operated by the Employers in 1939 and at which the members of the Union were then employed.

This is the only issue considered by the Referee and his decision herein is not to be construed as affecting claimants' eligibility (or that of any one of them) for benefits under any other provision of the [225] Alaska Unemployment Compensation Law.

The case of a representative claimant was submitted as a typical test and it was stipulated that the testimony taken and the decision of the Referee on the basis of the record and evidence should apply to all the members of Local No. 5, who had made applications for benefits.

This brings us to a consideration of the applicable section of our Unemployment Compensation law.

Section 5(d) as amended by the Act of January 17, 1939, reads:

Section 5: An individual shall be disqualified for benefits:

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply, if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dis-

pute occurs, any of whom are participating in or directly interested in the dispute.

It will be noted that before the section was amended in 1939 disqualification followed upon a finding by the Commission that the unemployment is due "to a stoppage of work which exists because of a labor dispute" at the factory establishment or other premises at which the employee is or was last employed. (See Section 5(d) Unemployment Compensation Act of 1937.) It will be further noticed that under the former section the disqualification continued during the entire period work was stopped due to a labor dispute, while under the amendment, disqualification, on account of the existence of a "labor dispute in active progress" cannot exceed eight weeks.

What is the purpose of the amendment and why was it adopted? By it the legislature deleted the phrase (unemployment) "due to a stoppage of work which exists because of a labor dispute" and inserted, in lieu thereof, (unemployment) "due to a labor dispute which is in active progress." The amendment was adopted to cover a situation where a serious labor dispute exists yet it does not result in stoppage of work at the plant—the Employer with the help of those who remain after a strike has been called and with such additional help as he may be able to recruit, continues his operation in spite of the dispute and in spite [226] of the existence of a strike; in such a case, the men involved in the dispute, then in progress, if

they have become unemployed on account of it, are disqualified to receive unemployment benefits; the advocates of the amendment further claimed that the period of disqualification, due to the existence of a labor dispute, should be limited to a definite time and as the records of the United States Department of Labor show that few strikes last over eight weeks, this period was adopted.

The Alaska Act does not define "Labor Dispute" nor what constitutes a "Labor dispute in active progress."

The National Labor Relations Act, "Wagner Act") defines "labor dispute" as follows:

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of working agreements for the respective plants.

The crucial question is. Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?

A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? [227] Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations have been abandoned, what was there to dispute about? The matter had become a closed incident—"a dead horse" as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Apalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued until the re-opening of the mines. In our case there was no possibility of a re-open-

ing; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed [228] by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd,—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualification on account of the existence of a labor dispute in active progress, after the respec-

tive dates mentioned, is not justified under the facts as found and the law as I believe it to be.

The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court, will mean the practical exhaustion of the Unemployment Compensation fund of the Territory but this is due to the wording of our Unemployment Compensation Act and not to any other cause and is a matter for the Legislature to consider and not the Referee.

For the reasons hereinbefore stated, the Referee determines: First: That from April 5th to April 10th, 1940, a labor dispute was in active progress with reference to the operation of the Karluk plant operated in 1939 by the Alaska Packers Association;

Second: That from April first to April twelfth, 1940, a labor dispute was in active progress involving operation of the Chignik plant operated in 1939 by Alaska Packers Association;

Third: That at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939. [229]

It follows that:

First: The claims filed by the 1939 Karluk employees for unemployment compensation for the period between April 5th to April 11th, 1940, should be denied;

Second: The claims filed by the 1939 Chignik employees for unemployment compensation for the

period between April 1st and April 13th, 1940, should be denied;

Third: That the claims filed by the 1939 Bristol Bay employees for unemployment compensation after May 5th, 1940, should be allowed; and

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants.

September 21, 1940. [230]

Before the Unemployment Compensation Commission of Alaska

Starting November 14, 1940, at Juneau, Alaska

In the Matter of the Claims

of

FRANK L. ARAGON, and other applicants, Members of the Alaska Cannery Workers Union, Local No. 5,

Applicants,

and

ALASKA CANNERY WORKERS UNION LOCAL No. 5,

On behalf of Applicants,

FOR UNEMPLOYMENT BENEFITS.

ALASKA PACKERS ASSOCIATION, RED SALMON CANNING COMPANY & ALASKA SALMON COMPANY,

Respondents.

DECISION ON APPEAL

of

Alaska Unemployment Compensation Commission (Juneau, Alaska.)

"Appeal Tribunals. To hear and determine disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee selected in

accordance with Section 11(d) of this Act. No Person shall participate on behalf of the Commission in any case in which he is an interested party".

(Section 6(d) Alaska Unemployment Compensation Law.)

The statutory provisions involve Section 5 (d) of the Alaska Unemployment Compensation Law, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939.

* * * * * * *

This matter came on to be heard before the Alaska Unemployment Compensation Commission, upon an appeal by the respondents-employers, from a determination of the same made by a referee. The referee having found valid the claims of various claimants-appellees of the employers-respondents.

From the record of the testimony taken before the referee, and [231] various exhibits filed with him, it appears that the contentions of the respective parties are as follows:

The employees-appellees, having taken no objections, exceptions or appeal from the findings and conclusions made by the referee, agree with the same.

The employers-respondents claim that the unemployment of the claimants-appellees is due to a labor dispute which was in active progress at the factory, establishment or other premises of which said claimants, and all of them, were last employed during the seasonable working period of

the salmon cannery industry of the Territory of Alaska, as set forth in said Commission's Regulation No. 10.

The stipulation entered into between the parties provides there should be one, and only one, brief filed on behalf of the employees and the employers, and that no oral argument be made before the Commission.

After a careful examination of the testimony adduced before the referee, the exhibits filed with him and the briefs submitted by the interested parties, the Commission makes the following,—

FINDINGS OF FACT

and

REASONS FOR DECISION:

That all of the claimants-appellees were employees of the employers-respondents during the seasonable canning season as set out in Regulation No. 10 of the Alaska Unemployment Compensation Commission for the year 1939. That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940. That the agents of the claimants-appellees admitted receipt of the notification of such cancellation, and thereafter entered into negotiations for the canning season of 1940.

That this industry is a seasonable industry, rec-

ognized as such by this Commission in setting forth in its Regulation No. 10, the dates for which unemployment compensation could be allowed by the Commission. That the claimants-appellees were fully aware of this condition, as were the employers-respondents. That the dates of operation of canneries in the various sections involved in this controversy, as set out in said Regulation 10, which was adopted by the Commission November 6, 1938, are as follows: [232]

Kodiak Island District, which includes all operations on the Karluk River, one season, April 5th to September 25th;

Alaska Peninsula District, which includes all operations at Chignik, one season, April 1st to September 10th; and

Bristol Bay District, which includes all operations in Bristol Bay, one season, May 5th to August 25th.

That the following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter.

In the Declaration of the Territorial Public Policy set forth in the first paragraph of the Act creating the Unemployment Compensation Commission, Chapter 4 Extraordinary Session Laws of 1938 as amended by Chapters 1 and 51, Session Laws, 1939, the Legislature of Alaska declares:

> "The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own".

The question to be decided by this Commission is if the claimants-appellees are entitled to the benefits of unemployment compensation, as provided for by said Act, through no fault of their own.

CONCLUSION AND DECISION

We conclude that the claimants-appellees and the employers-respondents were engaged in a seasonable industry;

That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued, and that paragraph (d) under Section 5, under the title "Disqualification for Benefits" provides: [233]

> That any individual shall be disqualified "For any week with respect to which the Commis-

sion finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall shall not exceed the 8 weeks immediately following the beginning of such dispute"——

And that each claimant-appellee, is entitled to receive, if otherwise eligible, unemployment insurance as follows:

At the Karluk Cannery eight (8) weeks after April 5th; at the Chignik Cannery, eight (8) weeks after April 1st, and at the Bristol Bay Cannery eight (8) weeks after May 5th, said eight weeks disqualifying period being in addition to the two (2) weeks regular two weeks waiting period, and if otherwise eligible.

The Decision and Conclusion of the referee are hereby reversed, and benefits allowed in accordance with the Commission's initial determination.

Absent from this hearing, one member of the Commission, viz, Dr. Noble Dick.

Dated at Juneau, Alaska, this 18th day of November, 1940.

ALASKA UNEMPLOYMENT COMPENSATION COMMISSION.

By: R. E. HARDCASTLE,
Chairman.

Attest: R. S. BRAGAW,
Secretary. [234]

[Title of District Court and Cause.]

PETITION FOR REVIEW

Of Decision of Unemployment Compensation Commission of Territory of Alaska

(Pursuant to Alaska Unemployment Compensation Act, Ch. 4, Extraordinary Session Laws of 1937, as amended by Cha. 1 and 51, Session Laws, 1939 (Section 6 (i)) [235]

Plaintiffs and each of them file this, their Petition for Review of a Decision of the Unemployment Compensation Commission of Alaska, and in support thereof present and show the following:

I.

That this is a Petition for Review of a decision of the Unemployment Compensation Commission of Alaska made on November 18, 1940 in the case titled "Frank L. Aragon, and other Applicants, Members of the Alaska Cannery Workers Union, Local No. 5, Applicants, and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants, For Unemployment Benefits, and Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company, Respondents", which decision was adverse to petitioners herein.

That a copy of said Decision is attached hereto and marked Exhibit "A", and is hereby expressly referred to and incorporated herein and made part hereof by this reference the same as though fully set forth hereinafter.

II.

That this Petition for Review of said Decision is brought pursuant to and this Court has jurisdiction under the Alaska Unemployment Compensation Act (hereinafter called the Act), Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939, Section 6 (i), of the Territory of Alaska.

III.

That the defendant Unemployment Compensation Commission of Alaska (hereinafter called Commission) is, and during all the times herein mentioned was the body duly created and authorized by the Act to administer said Act, and the defendant R. E. Hardcastle, R. S. Bragaw and Noble Dick are, and during all the times herein mentioned were the duly qualified and acting members of, and constituted said Commission, and rendered the Decision referred to in Paragraph I. That said Commission and Commissioners maintain their office at Juneau, Territory of Alaska.

IV.

That defendant Alaska Packers Association is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to [236] the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6 (i) of the Act.

V.

That defendant Red Salmon Canning Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VI.

That defendant Alaska Salmon Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VII.

That Alaska Cannery Workers Union, Local No. 5 (hereinafter called the Union) is an unincorporated association and labor union and throughout the proceedings mentioned in paragraph I herein appeared for and on behalf of individual petitioners who at said time were and still are members of said Union, and the Union appears in this action for review for and on behalf of all individual petitioners involved in said proceeding mentioned in paragraph I.

VIII.

That Frank L. Aragon and all the other individual petitions are workers in the Alaska Salmon industry and during the 1939 Alaska salmon season various individual petitioners were employed by Alaska Packers Association, various individual petitioners were employed by Red Salmon Canning Company, and various individual petitioners were employed by Alaska Salmon Company, and which of said individual petitioners were employed by which of said companies, is a matter of record in the files of the Commission, which records are hereby referred to and incorporated herein and made a part hereof by this reference. That the names of all said individual petitioners are not listed herein, but this Petitioner for Review is brought by and on [237] behalf of all such individuals who were parties to or whose right to benefits were determined in the proceedings mentioned in paragraph I herein. That the names of said individual petitioners are not listed herein because it was ruled by the Commission that the decision in the case mentioned in paragraph I would apply to all claimants who had filed for benefits with the Commission who are members of the Union insofar as the eight weeks' disqualification for alleged labor dispute within the meaning of Section 5(d) of the Act is concerned, and that since this is a Petition for Review it is unnecessary to list herein all such individual petitioners. In connection with the allegations of this paragraph, reference is made to the correspondence in the files of the Commission between the Commis-

sion, the Union, and counsel for the Union on the subject that these proceedings apply to and will determine the rights of all claimants who are members of the Union, and reference is further made to the ruling of the Special Referee which appears at page 7 of the Transcript of the proceedings described in paragraph IX herein, and said correspondence and ruling are incorporated herein by this reference and made part hereof the same as though they were fully set forth herein.

IX.

That on June 17, 18, and 19, 1940, a hearing was held in San Francisco, California before Henry Roden, Esq. who was designated by and served as Special Referee for the Commission pursuant to the provisions of the Act to determine the question of the labor dispute disqualification, if any, of applicants (petitioners herein). That at said hearing the individual petitioners, and the Union in their behalf, appeared and offered evidence to support their contention that petitioners were not disqualified on account of any labor dispute in active progress within the meaning of Section 5(d) of the Act, and the defendant canning companies appeared and contested the contention of petitioners. That thereafter and on September 21, 1940, Referee Roden rendered his decision that there was a "labor dispute", but that it was not in "active progress" at Karluk after April 10, 1940, nor a Chignik after April 12, 1940 and that at Bristol Bay there was no "labor dispute" in "active progress" at the time

the season opened, to wit: on May 5, 1940; and that applicants (petitioners herein) should be paid benefits accordingly. That the decision of Referee Roden which is on file with the Commission in this case is hereby expressly referred to, incorporated [238] herein and made part hereof by this reference the same as though fully set forth herein.

X.

That defendants Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company on October 3, 1940, filed notice of appeal with the Commission from the decision of the Referee mentioned in paragraph IX herein. That said appeal was thereafter by the Commission heard and determined as described in paragraph I herein, and the decision of the Referee was reversed by the Commission.

XI

That petitioners have exhausted their administrative remedy before the Commission as provided by the Act and as required by Section 6(h) of the Act before bringing this action for judicial review.

XII.

That pursuant to the provisions of Section 6(i) of the Act, petitioners state the following as grounds upon which this review is sought and for which the decision of the Commission mentioned in paragraph I should be reversed:

1. CERTAIN FINDINGS OF FACT MADE BY THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

a. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (employers and union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our underlining.)

Argument and exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X", Applicants' Exhibit "19", Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at midnight May 3, 1940, and that the employers abandoned the Bristol Bay Season at that time.) [239]

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the employers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Argument and exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season is there was to be operation by the San Francisco operators, the finding is proper

and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belongs anywhere, rests with the [240] employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. p. 333, p. 335-336.) The use of the word "necessity" is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned *it* 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during 1940 irrespective of whether there had been or had not been an agreement with the Union. (See Tr. p. 320, stipulation by Mr. Oliver, counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

(a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: first, that that was a "labor dispute" and second, that there was an "active labor dispute at the opening of the season".

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season. [241]

4. That the Union admitted receipt of the notice of cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That employers and applicants were aware of this condition.

9. That the dates of operation of the canneries

in the districts involved in this controversy as fixed by Regulation 10 are as follows:

Karluk: April 5-September 25;

Chignik: April 1-September 10;

Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commenced.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10.

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are no findings to support a conclusion that a "labor dispute" existed.

(2) Plaintiffs submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas

of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers [242] abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse." (See decision of Referee Roden, p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19.")

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing cannot be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there.

Therefore, the conclusion that "an active labor

dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, [243] that it continued beyond the dates mentioned for the respective areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939 San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing

further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the government [244] ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940;; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsupported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant

is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employe relationship to terminate. Therefore, there was no labor dispute in "active" progress. A disputue in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves) they could end it, thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was [245] all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. (Tr. p. 320) Therefore, it would follow that the Employees of Alaska Pack-

ers (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute. Insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol Bay would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is, petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute. [246]

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 contract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their fault but because

of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no *labor*

5. THE EVIDENCE AND A PROPER CONSIDERATION OF THE CASE REQUIRES FINDINGS OF FACT ON MATTERS WHICH THE COMMISSION IGNORED.

The Commission did not make findings on the following matters necessary to a proper consideration of the case:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case?

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemployment of petitioners "due" to the seasonal nature of

their work and the fact that they were never re-employed in 1940, rather than an alleged "labor dispute"?

3. If there was a dispute, how long did it remain in "active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940? Was not the Referee [247] correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotations which do not result in a contract constitute a labor dispute within the meaning of the Act?

6. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act.

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940, at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry wthin the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand, it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers, as is its declared purpose. [248]

Unemployment laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualification is included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17) There was no "dispute" or "strike" here which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing, and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIV.

That the Commission found that the "employees-appellees (petitioners), having taken no objection, exception or appeal from the findings and conclusions of the referee, agree with the same". Petitioners allege that since the employers appealed the case, the entire matter was opened on review to the Commission, and is similarly opened before this Honorable Court. That insofar as petitioners raise matters herein which are *it* issue with the findings and conclusion of the Referee, as well as of the Commission, they are not precluded from raising

those matters because they were satisfied to rest with the *Referee'* decision. Had employers taken no appeal from the Referee's decision, petitioners would have rested. Since the appeal was taken by the employers, petitioners took issue with various parts of the Referee's decision before the Commission, and renew those objections here.

Wherefore, petitioners pray judgment against defendants as follows:

(1) That this Honorable Court review and reverse the decision of the Commissioner insofar as petitioners were disqualified for a period of eight weeks each because of an alleged "labor dispute", [249] and find petitioners not disqualified for said alleged cause;

(2) That the decision of the Commission of November 18, 1940 be set aside, and that the decision of Referee Henry Roden of September 21, 1940 in the within matter be adopted by, and given effect by this Honorable Court; ;

(3) For costs of suit herein, and for such additional and further relief as is just and meet in the premises.

Dated: January 3rd, 1940.

ANDERSEN & RESNER

Attorneys for Petitioners.

[Endorsed]: Filed Jan. 7, 1941. [250]

[Title of District Court and Cause.]

Received January 8, 1941 Civil Docket No. 11211
For service by Deputy Thompson.

(No. 4620-A)

SUMMONS

To _____, Defendant--,

Greeting:

In the Name of the United States of America, You, and each of you, are hereby commanded to be and appear in the above-entitled Court, holden at _____ in said Division of said Territory and answer the complaint filed against you in the above entitled action, within thirty days from the date of the service of this summons and a copy of the said complaint upon you, and, if you fail so to appear and answer, for want thereof, the plaintiff--- will take judgment against you, and each of you, for the sum--- specified in said complaint, and will apply to the Court for the relief demanded therein, a copy of which said complaint is herewith served upon you. The relief demanded therein is,

PETITION FOR REVIEW

of Decision of Unemployment Compensation Commission of Territory of Alaska (Pursuant to Alaska Unemployment Compensation Act, Ch. 4, Extraordinary Session Laws of 1937, as amended by Chs. 1 and 51, Session Laws, 1939, Section 6 (i))

And you, the United States Marshal of Division No. 1 of the Territory of Alaska, or any Deputy, are hereby required to make service of this summons upon the said defendant---, and each of them, as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of its delivery to you, with an endorsement hereon of your doings in the premises.

In Witness Whereof I have hereto set my hand and affixed the Seal of the above Court, at Juneau, Alaska, this 7th day of January, A. D., 1941.

[Seal] ROBERT E. COUGHLIN
Clerk.
By JOHN J. GILMORE
Deputy.

[Endorsed]: Filed Jan. 8, 1941. [251]

United States of America
Territory of Alaska
Division Number One.—ss.

I, William T. Mahoney, United States Marshal for the First Division, Territory of Alaska, hereby certify that I received the within summons at Juneau, Alaska on the 8th day of January, 1941 and that thereafter I served the within summons at Juneau, Alaska on the Defendants, Walter P. Sharpe, Executive Director of the Unemployment Compensation Commission, personally and in person on the 8th day of January, 1941 by then and there delivering

to and leaving with said defendant a copy of the within summons, together with a copy of the complaint in this case, which said copy of summons and complaint so served on defendant were duly certified to by Herbert Risner, Attorney for plaintiff to be true and correct copies of the original summons and complaint on file in the within cause.

Dated at Juneau, Alaska this 8th day of January, 1941.

WILLIAM T. MAHONEY,
United States Marshal.
By: SIDNEY J. THOMPSON,
Deputy.

Marshal's Fees $3.10. [251a]

[Title of District Court and Cause.]

RESPONDENTS' ANSWER TO PETITION FOR REVIEW.

1.

Respondents admit each and every allegation contained in Paragraphs I to XI, inclusive, of the Petition.

11.

Section 1 of Paragraph XII

Respondents in answer to the allegation in Section 1 of Paragraph XII of the Petition, deny that certain or any Findings of Fact made by the Commission are not supported by the evidence.

1-a-(1)

Respondents admit that the Commission made the finding mentioned in Sub-section 1a, thereof, which is as follows:

> "Negotiations for agreement were entered into between said parties and were in active progress at the beginning of the canning season as set forth in said Regulation 10." (Our underlining)

They also admit that the negotiations terminated two days before the opening of the Bristol Bay season, but not two days before the opening of the canning season. The Commission does not hold that the negotiations continued beyond the dates on which they terminated for the respective districts but refers to the beginning of the canning season generally, simply to show that negotiations were in progress as proof that a dispute existed prior to the actual period during which the fish could have been canned.

[252]

It is not material to this case. The question involved is whether the dispute continued in active progress and not whether the negotiations continued into the seasons for canning the fish. The negotiations were simply evidence of the dispute. If the dispute continued as to Chignik and Karluk, it also continued as to Bristol Bay work, for the whole decision is based upon a recognition of the continuance of the dispute even though negotiations terminated as to Chignik and Karluk soon after the season opened, and as to Bristol Bay just before

the season opened, the opening of the respective seasons being by Regulation 10 set as:

Chignik April 1st
Karluk April 5th, and
Bristol Bay May 5th
(See Regulation 10)

1-a(2)

The argument contained in Sub-section 1-a(2), regarding Alaska Salmon Company, is defeated by the same reasoning. The evidence shows this company abandoned its entire operations on April 30, 1940, and was not interested in any further negotiations, but the dispute continued just the same as it did after May 3rd with the other operators. This question is more fully discussed hereinafter.

1-b(1)

This case does not involve the merits of the respective demands which each party required before signing a contract. It is sufficient to say that no agreement was reached. Respondents find no inference in the finding:

> "That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940"

that the Commission is placing any onus or blame on either petitioners or respondents. Petitioners' argument seems to be an attempt to introduce a new element in the case which has no place in it. The

Commission does not have to decide which party, if any, was at fault in failing to give in to the other. The Commission can only determine whether or not there was a dispute in active progress during the respective eight-week periods. [253]

1-b-(2)

The fact that Alaska Salmon Company set an earlier deadline by three days than the other two operators is immaterial. It is simply a question of whether their employees were also involved in a dispute, and not a question of when their negotiations terminated. Petitioners say Alaska Salmon Company did not find it necessary to reach an agreement for the 1940 season. An agreement as to the terms of one's employment is always "necessary". Agreements certainly have been necessary and still are necessary between the cannery workers and employers. The failure of the operations was wholly because of the necessity of an agreement before the operations could commence.

Section 2 of Paragraph XII

Respondents deny that the conclusions of law and decision are not supported by the findings of fact.

2-a-(1)

In preparing its findings of fact, the Commission did not actually use the words "labor dispute" but recites the facts regarding the cancellation of the 1939 "working agreement", the negotiations for and failure to arrive at a new agreement. The contention of the petitioners under this sub-section is that these facts do not support a conclusion that

a "labor dispute" existed between the parties. A labor dispute is defined as a controversy over terms and conditions of employment. (see Paragraph 1, Page 5, Respondent's Brief on Appeal to Commission.)

The Commission made the following finding, to-wit:

> "That following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter."

In effect, the petitioners contend that although the finding refers to negotiations, there is no reference therein as to the subject of the negotiations. The portions of the finding underlined above can support no other conclusion and certainly support the conclusion that "there was an active labor dispute existing between said parties." (See second

paragraph of Conclusion and Decision of Commission.) [254]

2-a-(2)

The argument in the petition under the above numbered part of Paragraph XII, attacks the conclusion that there was an "active labor dispute existing between the parties at the opening of the season."

Petitioners contend that since the Bristol Bay negotiations ended on May 3rd and the season, as set by Regulation 10, opened on May 5th, the labor dispute was not "active at the "opening of the canning season". Such a contention presupposes that you cannot have a labor dispute after the negotiations cease. It is admitted by all the parties that the negotiations terminated as to the respective places of work as follows:

Karluk	April 10th
Chignik	April 12th
Bristol Bay	May 3rd

The seasons opened as follows:

Karluk	April 5th
Chignik	April 1st
Bristol Bay	May 5th

The negotiations, therefore, continued after the opening of the season for Karluk and Chignik, but ended before the opening of the season as to Bristol Bay. The question involved in this case is whether the dispute continued in active progress during the eight weeks following the two-week waiting period after the opening of the respective seasons and not

whether the negotiations continued during these periods. It is immaterial when the negotiations ended if the dispute continued. Respondents submit that a dispute can and did exist in active progress throughout the whole ten weeks after the season opened for each place of work.

Petitioners attempt to attach some importance to the fact that the negotiations terminated two days before the Bristol Bay season opened, but it makes no difference whether they terminated before or after May 5th if the dispute continued throughout the eight weeks in May, June and July, as was found by the Commission. This question is thoroughly discussed in the remainder of this answer and in respondent's affirmative brief on the subject.

2-b

In the petition under this numbered heading petitioners take exception to the conclusion that "the dispute continued", claiming the conclusion is not supported by the Findings. [255]

The Commission made "Findings of Fact and Reasons for Decision" which were followed by a "Conclusion and Decision." In its Findings the Commission sets forth the following uncontroverted facts:

(1) A new agreement had to be reached for 1940;

(2) Negotiations were held in an attempt to reach an agreement;

(3) No working agreement was made;

(4) As a result thereof, no work was performed in the 1940 season.

From these facts the Commission concluded there was "an active labor dispute existing between said parties at the opening of the season; that said dispute continued", and that the law was as set forth in the Conclusion and Decision, and, therefore, the petitioners were entitled to benefits only after the eight weeks of disqualification because of the existence of an active labor dispute during those eight weeks.

Respondents submit that it was not necessary for the Commission to make a finding that the dispute continued, as this is a matter of conclusion determinable from the facts above enumerated. A finding is something to be found in the evidence, and a decision is something which must be concluded from the evidence. Therefore, the decision that the dispute continued was properly in the decision as it is a matter of law and it would be improperly placed if put in the Findings.

Petitioners also object to the lack of a finding to support the conclusion that a labor dispute existed. The same argument is asserted by respondents to this objection as was asserted in the last paragraph hereof. The existence of a labor dispute is a matter of law to be determined from the Findings set forth on the preceding page.

Petitioners also under this numbered heading raise the false assumption that no labor dispute can exist after the negotiations terminate. This as-

sumption is repeatedly denied herein and will be treated at length in a brief submitted by respondents representing the affirmative argument which shows that a dispute can continue after the negotiations for a new contract have terminated between an employer and employees.

3.

Respondents deny that the Conclusions of Law and Decision are not supported by the evidence.

3-a.

Petitioners under this numbered heading contend no labor dispute can exist without picketing, a strike or the existence of an employer- [256] employee relationship. Respondents contend that a strike and picketing are not necessary elements to a dispute nor is it necessary that there be a presently existing employer-employee relationship.

As hereinabove stated, a labor dispute is defined as a controversy over terms and conditions of employment. There is abundant uncontroverted evidence to show the existence of the controversy as to the terms and conditions demanded by each side.

Petitioners contend that there must be an interruption in the work as distinguished from a failure to commence the work at the opening of a season. They contend that an interruption constitutes a strike, but that a failure to work does not constitute a strike. This seems to be splitting hairs uselessly, for either an interruption of work or a failure to commence work is simply evidence of a dis-

pute and sufficient evidence for the Commission to find that a labor dispute existed.

The courts have repeatedly held in labor cases under the jurisdiction of the National Labor Relations Act that men working in seasonal employment, regularly represented by the same bargaining agent and regularly employed for such seasonal work, are considered employees for the purposes of the Act. Even though petitioners were not under the control or on the payroll of the employers, and even though an employer-employee relationship may have existed, such a relationship is not necessary to create a labor dispute under such circumstances. The Commission is entitled to deny benefits to one who refuses to work when work is offered the same as it is entitled to refuse benefits to a man who quits his job. For this purpose a man drawing such benefits must report weekly to an employment office set up under the Social Security Act, and certify that he has been unable to gain employment.

Petitioners also claim that Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached. There is nothing to support this conclusion. It is true that Alaska Salmon Company withdrew from the negotiations on April 30th, but the failure to reach an agreement sooner was one of the principal causes for abandoning its operations. Mr. Roden asked if there were any reasons which compelled the Alaska Salmon Company not to operate irrespective of any difficulties in the negotiations, and the representative

of the Alaska Salmon Company said he could not go that far, but was willing to stipulate that there were factors or causes in addition to a labor dispute. (See Transcript, P. 318.) [257]

Mr. Roden asked Mr. Oliver if the company was financially embarrassed so it could not operate, and Mr. Oliver denied that this was the case. (See Transcript, P. 319.)

Therefore, it can only be said, and it must be said, that the labor dispute contributed materially to the failure of the Alaska Salmon Company to operate in 1940 and caused them to withdraw from the negotiations and abandon entirely the operations on April 30th, although the other companies were willing to negotiate three days longer on Bristol Bay operations. Alaska Salmon Company operates only in Bristol Bay.

3-b.

Under this numbered heading petitioners again raise the assumption that a labor dispute cannot be active unless negotiations are being held for the purpose of reaching a contract. As stated before, this matter will be treated in Respondents' affirmative brief. Respondents contend that a dispute continues in active progress as long as the differences between the parties continue to exist regardless of whether or not they do anything to solve those differences. In this case it was useless to do anything after the deadlines had been reached. These deadlines were the dates set by the operators

after which they could not load the ships, sail for Alaska and be here in time to catch the fish. After the deadlines, the differences between the parties continued to exist, but there was no use in trying to solve them. There is nothing to indicate that either side ever would or could accept the other's offer, either for the 1940 season or for the 1941 season. The differences continue to exist. Neither side has given in to the other, and there is no indication that any agreement will be reached in time to can fish in the 1941 season. The stoppage of work was complete throughout the whole season for each place of operation as the direct result of the dispute and the failure of the parties to reconcile their differences.

As will be shown in Respondents' Affirmative brief, it is a question of what the Legislature intended by the words "in active progress." Petitioners claim that in order for the dispute to be in active progress, there must have been something actively going on, such as picketing, negotiations or "an interruption of operations" as distinguished from a failure to begin operations. They say there must have been a way to end the dispute and an employer-employee relationship during the weeks of disqualification. Respondents contend there [258] need only be a disagreement on terms of employment affecting the operations throughout those weeks, preventing the employer-employee relationship, and preventing the operations from being prosecuted. As will be shown in Respondents' affirmative brief, the latter was the intention of the

Legislature, which would not want unemployment compensation funds to be paid during any period that the operations were affected and production stopped because of a labor dispute.

3-c.

The evidence is conclusive that no canning of fish was done by the operators because of this dispute, the differences were never solved and the dispute continued as a matter of law which must be concluded from the evidence.

3-d.

Petitioners attempt to render the decision of the Commission void because it does not specifically find and decide that the unemployment of petitioners was "due" to a labor dispute in active progress at the premises, and not "due" to some other cause. The Commission had a Referee take the testimony in this case and make a decision. The Referee found the unemploymen "due" to such a labor dispute, and found each and every element for disqualification to have existed except that he was of the opinion that the labor dispute did not continue "in active progress" through the eight weeks for which they had previously been disqualified by the Commission. The hearing before the Commission was to determine only one point, namely: Did the labor dispute continue in active progress throughout those eight weeks? The Commission decided it did, and there was nothing more necessary to decide or find. Petitioners had taken exceptions to the Findings of the Referee or his

decision. They were accepted by petitioners and concurred in by respondents, except insofar as respondents excepted thereto. No exception was taken to this finding of the Referee, and so no redetermination needed to be made on this point.

4.

Respondents deny that the Findings of Fact made by the Commission compel a decision contrary to the one rendered. Petitioners try again to inject a new and foreign element *in the case which has no* place in it. It is immaterial whether the operators insisted on a new contract or the respondents so insisted. The result was a dispute. There is nothing in the law which makes it necessary for the Commission to pay [259] benefits because somebody cancelled a working agreement or insisted on a new one.

5.

Respondents deny that the evidence and a proper consideration of the case requires findings of fact on matters which the Commission ignored.

In this connection, respondents wish to again point out that the Commission had only one question before it, namely: Did the labor dispute which the Referee found to exist at the beginning of the canning season continue throughout the eight weeks involved, or did it terminate with the termination of the negotiations?

6.

Respondents deny that the Commission's decision is contrary to law.

Respondents admit that the Act is to be liberally construed, but maintain that the liberal construction can only be for the purpose of accomplishing what was intended by the Legislature.

> "Laws enacted in the interest of the public welfare, for the protection of human life or the preservation of health—or providing remedies against either public or private wrongs, should be liberally construed with a view to promote the object in the mind of the Legislature." 59 C. J. 1105, Sec. 656.

Respondents thoroughly cover the subject of the intention of the Legislature in their brief in affirmative support of this answer. There respondents contend it was not the intention of the Legislature that workers should be paid benefits when their unemployment was caused by a disagreement over terms and conditions of employment, regardless of whether there was a strike or a refusal to accept their regular seasonal employment.

Wherefore, respondents pray that the petition of petitioners for review of the Commission's decision in the above entitled matter be dismissed, said decision affirmed and such further relief as is meet in the premises.

Dated at Juneau, Alaska, February 6th, 1941.

GROVER C. WINN,
Attorney for Unemployment Compensation Commission of the Terr. of Alaska: Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members constituting said Commission.

FAULKNER & BANFIELD,
PILLSBERY, MADISON & SUTRO,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Co., corporations (Respondents).

[Endorsed]: Filed Feb. 6, 1941. [260]

[Title of District Court and Cause.]

REQUEST TO SET DEFINITE TIME FOR HEARING OR TO SUBMIT BRIEFS.

Comes now the above named defendants and respondents and respectfully requests that the Court set a time definite for a hearing in the above entitled matter or a time definite within which to submit briefs.

Dated this 6th day of February, 1941.

GROVER C. WINN,
Attorney for Unemployment Compensation Commission of the Territory of Alaska: Noble Dick, R. E. Hardcastle and R. S. Bragaw, as Members constituting said commission.

FAULKNER & BANFIELD,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations. (Respondents)

[Endorsed]: Filed February 6, 1941. [261]

[Title of District Court and Cause.]

STIPULATION SUBMITTING CAUSE ON BRIEFS

It is hereby stipulated by and between respective counsel that the above entitled cause shall be submitted on briefs only and that there shall be no oral argument before the Court; that petitioners shall have until the 1st day of May, 1941 to file their opening brief; and that defendants and respondents shall have until the 25th day of May, 1941 within which to file their brief; and that petitioners shall have until the 20th day of June, 1941 within which to file their closing brief; after which and whereupon the matter shall be submitted to the Court for decision.

Dated: April 2nd, 1941.

ANDERSEN & RESNER,
Attorneys for Petitioners.
GROVER C. WINN,
FAULKNER & BANFIELD,
Attorneys for Respondents.
By N. C. BANFIELD.

It Is So Ordered
GEO. F. ALEXANDER,
Judge of the District Court.

[Endorsed]: Filed April 3, 1941. [262]

[Title of District Court and Cause.]

OPINION

This cause is here on a petition for review, filed by Frank L. Aragon, on behalf of himself and *other* similarly situated, hereinafter called the "Claimants," as petitioners, against the Alaska Unemployment Compensation Commission, (Hereinafter called "the Commission"); the members of said Commission and the employers involved; and concerns the right of the Claimants to unemployment compensation benefits under the Alaska Unemployment Compensation Act (hereinafter called "the Act"), Chap. 4, Extraordinary Session Laws of 1937, as amended by Chaps. 1 and 51, S. L. 1939, and particularly the question of whether Sec. 5 (d) Chap. 4 Extraordinary Session Laws of Alaska, 1937, as amended by Sec. 5 (d) Chap. 1, S. L. Alaska, 1939 disqualifies the Claimants from receiving benefits

thereunder, it having been decided by the Commission that their unemployment was "due to a labor dispute which was in active progress at the factory, establishment or other premises at which he is or was last employed."

The pertinent parts of Section 5 of Chap. 4 as amended, are here quoted:

> "Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits:
>
> Section 5 (d). For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that: [263]
>
> 1. He is not participating in or directly interested in the labor dispute which caused his unemployment; and
>
> 2. He does not belong to a grade or class of workers out of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute;"

The Claimants here contend they are entitled to be paid full benefits under the Act for their un-

employment during the 1940 Alaska salmon season, or, at least, that the Referee's decision should be restored and given full effect.

Their claims were first considered by an Examiner of the Commission, who denied them benefits, except after the first eight weeks following the opening of the season at the canneries in question, under the provisions of Sec. 5 (d) of the Alaska Unemployment Compensation Act, on the ground that "their unemployment was due to a 'labor dispute' in active progress at the establishment at which they were last employed." Thereafter, a Referee was appointed to take testimony and report his findings and conclusions to the Commission, who denied the claims as to Karluk and Chignik, but upheld them as to Bristol Bay. The matter was then considered by the Commission itself, which overruled the Referee as to Bristol Bay and sustained the Examiner, denying all benefits to the Claimants except after the first eight weeks following the opening of the season at the canneries in question.

Review of the Commission's decision is now sought by the Claimants in this Court, under authority of Section 6 (i) Chap. 4, Laws of Alaska, 1937, which provides:

> "(i) Court Review. Within thirty days after the decision of the Commission becomes final any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such deci-

sion, in which action any other party to the proceedings before the Commission shall be made a defendant.

* * * In any judicial proceeding under this section the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

It will be noted that Section 6 (i) provides that:

"* * * In any judicial proceeding under this section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

Furthermore, if (Petitioners) Claimants were not satisfied with the reasons given by the Commission for its decision in the notification of its decision given them, the Act provides they may appeal [264] therefrom within a specified time. Having failed to do so they cannot now complain on that score. (See Secs. 6 (c) and 6 (e) of the Act.)

There is no claim of fraud in this case, and hence the only questions for decision by this Court are whether the findings of fact made by the Commission are supported by evidence, and whether the conclusions thus reached are correct in law.

Before it passed upon the claims of the Claimants herein the Commission referred this matter

to a Referee who, after due notice to all interested parties, took voluminous and exhaustive testimony, which has been certified to this court and is now before us for examination.

From this record it appears that the Claimants (Petitioners herein) are all members of the Alaska Cannery Workers Union, Local No. 5 of San Francisco, a local union of the United Cannery Packing and Allied Workers of America, hereinafter designated as the "Union," said union being affiliated with the Maritime Federation of the Pacific. All the Claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska) and by the Red Salmon Canning Company, the Alaska Salmon Company, and the Alaska Packers Association in Bristol Bay. These concerns will hereinafter be designated as "the Employers." All of the Claimants reside in the San Francisco Bay region, and the Employers all operate salmon canneries in Alaska but have headquarters in, and operate out of, San Francisco.

Both parties appeared before the Referee and submitted evidence in support of their contentions. The Employers maintained that the unemployment of Claimants was due to a "labor dispute" which was "in active progress at the * * * premises at which he (the Claimants) is or was last employed." The Claimants took the opposite stand.

The Referee found the Alaska salmon fishing and canning industry to be a seasonal one, extending approximately from April into September of

each year; that the Commission had promulgated regularions wherein, for the purpose of the Act, the opening and closing days of the salmon season for various places in Alaska are fixed; at Karluk from April 5 to September 5; at Chignik from April 1 to Sept. 10; and at Bristol Bay from May 5 to Aug. 5 (Benefit Regulation No. 10).

From the inception of the industry in Alaska the salmon fleets carrying supplies, fishermen and cannery and other workers, have sailed [265] from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers for many years past have operated under agreement with the Alaska Fishermens Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union, Local No. 5, representing Claimants herein, entered into their first agreement with these employers in 1936, and continued to operate in each succeeding season under such agreements until and during the 1939 season. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and that the parties would then proceed to negotiate a new agreement. The 1939 agreement was terminated in accordance with this provision in November of 1939, and negotiations for the 1940 season contract commenced in March, 1940. These negotiations continued at San Francisco until about April 1st, with propositions of settlement being made by first one and then the other

of the parties in interest. At these negotiations the Claimants were represented by officials of their union and the Employers by the Alaska Salmon Industry, Inc., a corporation organized for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon canners.

Being still unable to arrive at any agreement, the Union forwarded a letter to the Employers about the first of April, withdrawing its last proposed 1940 agreement, and stating that all further negotiations were being transferred to Seattle, where its representatives would meet, and did meet, with the Employers' agents. This move was welcomed by the Employers, who hoped to negotiate a coastwise agreement which would govern all Alaska operations and thereby put the San Francisco operators and employees on a parity with the Seattle and Portland operators and employees.

Thereafter, negotiations were resumed between the parties at Seattle. There negotiations with the San Francisco unions being about to fail, last minute attempts were made by both parties to come to an understanding, the Union proposing a renewal of their "1939 San Francisco agreement," while the Employers proposed the acceptance by the Union of the so-called "1939 Seattle agreement." Eventually a new agreement was negotiated at Seattle between the Seattle and Portland operators and unions, but this occurred later and did not include the San Francisco unions and operators. [266]

Near the end of the negotiations at Seattle, the time growing near when an agreement must be made in order to make it possible for the operators to make the necessary preparations for operating their canneries in those districts, the San Francisco Employers notified the Union (Claimants) that if no binding contract was concluded by April 10th, regarding Karluk; or by April 12 regarding Chignik; or by May 3rd regarding Bristol Bay, no operations could be undertaken at these plants during the 1940 season. No agreement was reached with reference to any of the plants referred to within the zero hour fixed by the Employers, with the result that none of the canneries were operated in any of the districts above specified during the 1940 season and the Claimants thus lost their employment for that season.

The Claimants contend that the decision of the Commission should be reversed, because:

1. Certain findings of facts made by the Commission are not supported by the evidence, viz:

The Commission found as a fact that "negotiations for a 1940 agreement were entered into between the parties (Employers and Union) and were in active progress at the opening of the canning season, as set forth in said Regulation No. 10."

2. The conclusions of law and decision are not supported by the findings of fact, viz:

The Commission concluded that "There was an 'active labor dispute' existing between the parties at the opening of the season.

3. The conclusions of law and decision are not supported by the evidence, viz:

The conclusion that there was a 'labor dispute' is not supported by the evidence.

4. The findings of fact made by the Commission compelled a decision contrary to the one rendered; and

5. The evidence and a proper consideration of the case requires findings of facts on matters which the Commission ignored.

All of these contentions involve, in their final analysis, the interpretation of Sec. 5 (d) (as amended) of our Unemployment Compensation Act; and the determination of the larger questions of (1) What is a "labor dispute," and (2) whether such labor dispute was "in active progress" [267] at the factory, establishment or other premises where he is or was last employed; and it is to these larger questions that we shall address our principal attention.

Unfortunately the words "labor dispute" on which this controversy hinges, are not defined in the Alaska Unemployment Compensation Act; and we must therefore endeavor to determine what the legislature meant when those words were used. The legislature being supposed to have used such words in their common and accepted meaning, it remains for us to determine what that meaning is.

"Dispute" is defined in Webster's New International Dictionary as: "To contend in argument; to argue something maintained by another; to de-

bate; often to argue irritably; wrangle; to make a subject of disputation; to argue pro and con; to debate; to oppose by argument or assertion; to attempt to overthrow; controvert; to call in question; to deny the truth or validity of."

In Federal legislation the term "labor dispute" has been defined in two acts of the Congress. In the Norris-LaGuardia Act (U.S.C.A. Title 29, sub-sec. c of Sec. 113) the term is defined as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In the National Labor Relations Act (U.S.C.A. Title 29, sub-sec. 9 of Sec. 152) the term is defined thus:

"The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

Our own unemployment compensation act was enacted in pursuance of the policy of social legislation enacted by the Congress of the United States, and, as is well known, is operated in conformity

with Federal legislation and, to some extent, under Federal restrictions. We are not bound by the definition of a labor dispute contained in the Federal statutes, but these definitions are at least persuasive of what [268] should be the definition of such a dispute, and are not out of line with the general and common acceptance of the meaning of the term; and, as said by Judge Fox in Miners in General Group vs. Hix, 17 S. E. 2d. (W. Va.) 810:

> "Until a better definition is found, or there is some substantial reason for a finding that our legislature had in mind a different meaning to be attached thereto, there would seem to be no impropriety in our accepting these existing definitions (In Norris-LaGuardia and Wagner Acts) in the determination of what was then meant."

The term "labor dispute" has also been defined by many of our courts of last resort, but we regard a review of these decisions as unnecessary, since they can be readily found in "Words and Phrases" (Perm. Ed.) under that title.

Very recent opinions of the courts of last resort in Ala., Ky. and Tenn. uniformly hold, under statutes similar in all material respects to our own, that:

> Unemployment caused by the expiration of a contract of *of* employment, and by the inability of the parties to agree on the terms of a new contract, is "due to a labor dispute" within the meaning of their statutes; and persons so unemployed are ineligible for benefits.

Dept. of Ind. Rel. vs. Pesnell, 199 So. (Ala.) 720-724

Barnes vs. Hall, 146 S. W. 2nd (Ky.) 929

Block Coal & Coke Co. vs. United Mine Workers of A. 148 S. W. 2nd (Tenn.) 364.

There is, therefore, no question but what the negotiations between the parties, involving as they did, wages, hours and terms of employment, did constitute a "labor dispute" as that term is used in our statute.

We next turn to the determination of whether or not such labor dispute was "in active progress" at the factory, establishment or other premises at which he is or was last employed.

Concerning this The Commission found that "There was an active labor dispute existing between said parties at the opening of the season at all of the canneries in question, that said labor dispute continued," and that the Claimants were entitled to receive, if otherwise eligible, unemployment insurance as follows: "At Karluk Cannery eight (8) weeks after April 5; At Chignik Cannery eight (8) weeks after April 1; and at the Bristol Bay Cannery eight (8) weeks after May 5; said eight weeks disqualifying period being in addition to the two weeks regular waiting period, and if otherwise eligible."

It is admitted by the record that the dates of operation of the canneries in the districts involved in his controversy as fixed [269] by Regulation No. 10 are as follows:

At Chignik, from April 1st to September 10th:

At Karluk from April 3 to September 25, and

At Bristol Bay from May 5 to Aug. 25;

and that the negotiations were not called off as to Chignik until April 12, as to Karluk until April 10, and as to Bristol Bay until May 3d.

It thus appears by the record and the admissions of all the parties hereto, that such "labor dispute" was "in active progress" at Chignik until twelve days after the season began; at Karluk until April 10th—five days after the opening of the season there; and at Bristol Bay at least until May 3d, with the season officially opening there on May 5.

It also appears from the testimony taken before the Referee, (and is a fact so well known to both the Employers and Claimants, and to their representatives, and to the public generally, that the Court may well take judicial notice thereof), that even after an agreement has been reached, preliminary to the operation of such canneries, it is necessary for the Employers to purchase, pack, assemble and load onto their boats, food, medical and all other supplies for an entire season, and to transport such supplies and their working crews (the Claimants) from San Francisco to their canneries, a distance of from two to three thousand miles, and requiring ten to fifteen days to make the trip alone, without calculating the time nec-

essary for preparation for such trip and the time for unloading their crews and supplies at their destinations, putting their canneries into shape for operation and preparing generally for the season's work.

It should also be borne in mind that the work at these canneries is seasonal work of comparatively short duration, and that in order to operate said canneries it was necessary for the Employers to reach an agreement with the Claimants within a time sufficient to permit the necessary preparations for the season's work and such operations on a reasonable basis. This also was well known to both the Employers and the Claimants.

That there was a constantly recurring and open controversy between the Employers and the Claimants as to wages, etc. and that this "labor dispute" was the cause of the failure of the canneries to operate and the [270] consequent unemployment of the Claimants, is thoroughly established by the evidence taken before the Referee.

It is immaterial to this discussion and to the findings in this case as to who was responsible for the failure to agree upon a 1940 contract between the parties that caused Claimants' unemployment. The reason for the failure to operate the canneries and the consequent unemployment of the Claimants was because the parties could not agree upon the terms of a contract for the 1940 season. It is not important as to why they failed to agree or whose fault is was, or whether one party or the other was to blame. The only thing

of importance is the ultimate fact that they did not agree and that their failure to agree caused the unemployment of the Claimants, which is the basis of their claim.

Our statute makes no attempt to fix the responsibility for such stoppage of work, nor can we. The statute merely provides that no benefits may be paid thereunder where the "Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

Courts cannot legislate into statutes by interpretation, a meaning which the legislature itself was unwilling to sponsor or has purposely repudiated. Here the record shows that the reason for adding the proviso to Sec. 5(d) "provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute," was to give the beneficiaries of the statute eight weeks in which to settle their "labor dispute," and to deny them the benefits of unemployment compensation during such period. As was said by Justice Carter, in speaking for the Court in Deshler Broom Factory vs. Kinney (2 N. W. (2d) 332), in interpreting the Nebraska statute—which is substantially identical with our own:

> "The unemployment compensation law does not purport to grant benefits to workmen who leave their work voluntarily; and neither does

it intend for an employee to benefit from the act while his bargaining agents are attempting to adjust their differences with the employer, since voluntary idleness under such conditions is not 'unemployment'."

It thus appears that there was an "active labor dispute" existing between the parties hereto at the opening of the season. That no agreement was made for the 1940 season, as a result of which the canneries in question did not operate and the Claimants were thereby [271] deprived of employment.

The Claimants also contend that the Alaska Salmon Company abandoned its 1940 Bristol Bay operations on April 30, 1940, and would not have operated during 1940, irrespective of whether there had or had not been an agreement with the Union. This contention was considered by the Referee and found without merit, and we concur in his finding.

They also contend that there was no Employer-Employee relationship existing between the parties at the beginning of the 1940 season. It is, however, agreed that such relationship had existed between the parties in the previous seasons, which would bring them within the provision of our statute denying compensation to "those whose total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

"An employer-employee relationship is not necessary for the imposition of the disquali-

fication, since the statute is broad enough to cover not only one presently in an employer-employee relationship, but also one who has last been in such relationship, although that relationship may have expired."

(Block Coal & Coke Co. vs. United Mine Workers of America; Tennessee Supreme Court, March 8, 1941.)

(Dept. of Industrial Relations vs. Pesnell, 199 S. p. 720-726.)

(Barnes et al. vs. Hall, 146 S. W. 2d (Ky.) 929.)

Other Courts of last resort have so construed similar statutes.

They further contend that an "active labor dispute" means a strike and picket line, an operation which is interrupted by such dispute, but such is not the law, and no authorities are cited in support of this proposition, although many authorities could be cited to the contrary.

It is also urged that unemployment laws are remedial in nature, and as such are to be liberally construed. With this we agree, but in this connection we call attention to the declaration of the Territorial public policy set forth in the preamble to the Act itself, in these words:

"Declaration of Territorial Public Policy. As a guide to the interpretation and application of this act the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is

> a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burdens which now so often fall with crushing force upon the employed worker and his family * * *. The Legislature therefore declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory require the enactment of this measure under the police power of the Territory for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through No Fault of Their Own."

[272]

The purpose of our Unemployment Compensation Act as thus expressed was "to provide economic security for the benefit of persons unemployed through no fault of their own And We think the statute should be construed in keeping with its declared policy, and while yielding to the view that the statute should be liberally construed, we think that it should be liberally construed in consonance with its expressed purpose.

Other minor questions are raised by the claimants in their petition for review, but most of them are fully answered in the discussion of the larger questions involved, and such as remain are not considered of sufficient importance to merit discussion.

The conclusions herein announced find support in:

Latham vs. State Unemployment Comp. Comm. 117 P. 2d (Ore) 97,
Stearns Coal & Lumber Co. vs. U. S. Com. et al. 3 C.C.H. (Ky.) 20511,
Barnes vs. Hall—146 SW 2d. (Ky.) 929,
Miners in General Group vs. Hix 17 SE 2d (W. Va.) 810,
Dept. of Indus. Relations vs. Pesnell, 199 S. (Ala.) 720,
Ex Parte Pesnell—199 S. (Ala.) 726,
Block Coal & Coke Co. vs. United Mine Workers, 148 SW 2d (Tenn.) 364,
Deshler Broom Factory vs. Kinney 2 NW 2d. (Neb.) 332.

A review of these cases might be interesting, but this opinion has already reached unexpected length. We therefore only add that we are aware of no courts of last resort (nor have any such cases been cited) which have reached a conclusion at variance with the views herein expressed, and our information and research both indicate that a large majority of the State Commissions have reached the same conclusions with respect to similar unemployment for which compensation was sought under statutes similar, or differing only slightly, from our own.

The Finding of the Unemployment Commission are therefore affirmed.

Findings and Judgment may be prepared in accordance herewith.

Dated at Juneau, Alaska, April 30, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed May 2, 1942. [273]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the court on a petition of the petitioners above named, for review of a decision of the Unemployment Compensation Commission of the Territory of Alaska and the answer of the above named respondents, to-wit: The Unemployment Compensation Commission of Alaska, the members thereof, the Alaska Packers Association, Alaska Salmon Company and the Red Salmon Canning Company, corporations; and the matter having been by stipulation of all the parties hereto, submitted on briefs of petitioners and respondents, and the court having examined the whole record and considered the briefs and the law of the Territory of Alaska, and being fully advised in the premises; and having made and filed herein on May 2d, 1942, its written opinion, and it appearing that the claims of petitioners were first considered by an Examiner of the Commission, as prescribed by law, and denied, for eight weeks after the two-week waiting period following the opening of the season, as defined by the regulations of the Unemployment

Compensation Commission, at the canneries in question hereinafter named. That thereafter a Referee, to-wit: Henry Roden, was appointed to take testimony and report his findings and conclusions to the Commission, and the Referee denied the claims in part and upheld them in part. The matter was then considered by the Commission itself, which overruled the decision of the Referee in part and sustained it in part; and from the ruling and decision of the Commission, petitioners have sought a review of the decision of the Unemployment Compensation Commission in the above entitled court. That the court has jurisdiction over the parties and the subject matter, and now makes the following— [274]

FINDINGS OF FACT

1. That petitioners are members of Alaska Cannery Workers Union Local No. 5, an unincorporated association and labor union with collective bargaining powers, and the Union acted throughout all the proceedings herein on behalf of itself and all its members.

2. That the respondents, Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, are corporations with headquarters in San Francisco, operating canneries in several points in Alaska, to-wit: Chignik, Karluk and various places in Bristol Bay, and the petitioners are and were in 1939, employees of these companies in their fishing and canning operatons in Alaska. That the respondent companes are engaged in catch-

ing, canning and marketing salmon in the waters of Alaska and at the places hereinabove mentioned and mentioned in the proceedings, and that this work is seasonal in nature and the time of each year during which fishing can be carried on is prescribed by regulations of the Department of the Interior pursuant to the laws of Congress, the actual fishing season being prescribed by law and regulation, and the entire operations, including the fishing season, covering only a few months of each year. That the fishing and canning season, including the period of preparation therefor, for the purposes of the unemployment compensation law of the Territory, at various points in Alaska, is under the law fixed by regulations of the Commission, and that these regulations prescribe the opening and closing days of the salmon season at Karluk, Alaska, to be from April 5th to September 5th; at Chignik from April 1st to September 10th; and at Bristol Bay from May 5th to August 5th, and that the employees, including petitioners, are sent from San Francisco, together with supplies, each year, and returned to San Francisco at the end of the season, and the respondent companies, the employers, for many years past operated each and every season under an agreement with the Alaska Fishermen's Union, and in more recent years and including the seasons from 1936 to 1939, inclusive, with the Alaska Cannery Workers Union Local No. 5, which represents the claimants herein.

3. That before the employees sailed from San Francisco each year for the canneries in Alaska and

the fishing grounds, they made a working agreement through the unions with the companies, covering wages, hours, working conditions and all other matters incident to the employment and usually covered by such working agreements. [275]

4. That the last working agreement actually entered into between the companies and the petitioners and employees and the Union acting for them, covered the season 1939, and it was terminated in November 1939 and no agreement was ever made for the season of 1940 for any of the companies at any of their canneries in Alaska, and no canneries operated during the 1940 season.

5. That negotiations were entered into before the dates of the opening of the season, as prescribed by the regulations of the Alaska Unemployment Compensation Commission, and there was a disagreement between petitioners and the Union and its members and the respondent companies. Demands were made by the Union and its members and by the claimants and petitioners; offers were made by the companies, the respondents, and counterdemands were made, all covering the respective canneries. These demands, offers and counterdemands were all with reference to the terms and conditions of employment, and especially with reference to the wage scales for the 1940 season, and there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

6. That in order to operate salmon canneries in Alaska, it is necessary for the operators, the companies, to make preparations sometime in advance to sign on its employees, prepare its ships, purchase and load supplies and sail to the canneries in Alaska in time to make all preparations there and be on the ground when the fishing season opens, as prescribed by law.

7. That after the labor dispute as hereinabove mentioned had continued for some time and no prospect of settlement was in sight, the employers notified the claimants, petitioners and the Union, that if no contract were concluded before April 10 for the Karluk operations, before April 12th for the Chignik operations and before May 3rd for the Bristol Bay operations, it would be impossible to operate and no operations could be undertaken at the canning plants at Chignik, Karluk and Bristol Bay, and the court finds that from the nature of these operations and the requisite nature of the preparations required, no such operations could be undertaken unless agreements were reached before those dates.

8. That no agreement was reached within the time set by the employ- [276] ment for the respective plants, and no agreement was reached within time for the opening of the fishing and canning season as prescribed by the regulations of the Department of Interior and as defined by the regulations of the Unemployment Compensation Commission of Alaska, and no operations could be carried on dur-

ing the 1940 season by the respondent companies at their canneries at Chignik, Karluk and various points in Bristol Bay.

9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska.

11. That the conclusions of law and the decisions of the Alaska Unemployment Compensation Commission were amply supported by the findings and by the evidence, and the decision was proper and in accordance with the findings and evidence, and the findings were sufficient to sustain the decision of the Commission and no other findings were necessary to a determination of the question involved, and such findings and decision were made according to law.

12. That the evidence does not support the con-

tention of claimants that the Alaska Salmon Company, one of the respondents, would not have operated in 1940 regardless of the outcome of the labor dispute and regardless of whether or not there had been or had not been an agreement made with claimants.

13. That petitioners made no objections to the findings of the Commission and did not appeal to the Commission from its decision within the time and in the manner required by law, and that there was complete absence of fraud, and, therefore, the findings of the Commission are conclusive. [277]

Based on the foregoing Findings, the court makes the following:

CONCLUSIONS OF LAW

1. The Claimants were not unemployed "through no fault of their own," but were unemployed because they were unwilling to accept employment offered them. The claimants were unemployed due to a labor dispute which was during the entire fishing and canning season of 1940 as defined by the Commission in active progress at the factory, establishment or other premises at which they were last employed.

2. That an active labor dispute does not mean, under the statute, picket lines and strikes and interruption of work already begun, but may consist of a controversy without the existence of a strike. That while the Alaska Unemployment Compensation laws is of a remedial nature and to be liberally construed, it must be construed in keeping with the

declared purpose of the law, which is found in Chapter 4, Session Laws of Alaska, Extraordinary Session, 1937.

3. That the findings and decision of the Alaska Unemployment Compensation Commission, of which petitioners sought a review, are affirmed; and none of the claimants are entitled to the benefits claimed.

Judgment and Decree may be entered accordingly.

Done in open court this 8th day of August, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed August 8, 1942. [278]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of California,
City and County of San Francisco—ss.

Albert J. Brown, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was, a resident of the State of California, over the age of eighteen years, and competent to be a witness in the above entitled matter; that on the 10th day of July, 1942, he served a copy of the findings of fact and conclusions of law in the above entitled matter upon the law firm of Messrs. Andersen & Resner, attorneys for the above named petitioners, by delivering to Herbert Resner, Esq., personally at his office at 544 Market Street, San

Francisco, California, a copy of said findings of fact and conclusions of law.

ALBERT J. BROWN

Subscribed and sworn to before me this 11th day of July, 1942.

(Seal) FRANK C. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [279]

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 4620-A

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants,

Petitioners,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation; and RED SALMON CANNING COMPANY, a corporation,

Defendants and Respondents.

DECREE

This matter having come on before the court to

be heard upon the petition of claimants hereinabove named, for a review of the decision of the Unemployment Compensation Commission of the Territory of Alaska, pursuant to the provisions of the Unemployment Compensation Act, Chapter 4, Session Laws of Alaska, Extraordinary Session 1937, as amended by Chapters 1 and 51, Session Laws of Alaska 1939, and the answer of respondents and defendants above named, and the matter having been by stipulation submitted on the briefs of the parties, and the court having examined the record and the briefs and the applicable law, and having rendered a written opinion on the 2nd day of May, 1942, and having made and filed herein its Findings of Fact and Conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that the findings and decision of the Alaska Unemployment Compensation Commission sought to be reviewed are hereby affirmed and approved, and claims of petitioners to benefits claimed by them under the provisions of the Alaska Unemployment Compensation law are hereby denied.

Done in Open Court this 8th day of August, 1942.

GEO. F. ALEXANDER,
Judge.

[Endorsed]: Filed August 8, 1942. [280]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and conceiving and believing themselves to be aggrieved by the judgment made and entered against them on August 8, 1942, do hereby petition the above entitled Court for leave to appeal from said judgment and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby file their assignment of errors asserted and relied upon by them upon said appeal; that an order be entered herein allowing said applicants and appellants to prosecute this appeal without the necessity of filing any cost and/or any supersedeas bond on appeal as provided by the Alaska Unemployment Compensation Law (Statutes of Alaska, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws 1939, Section 6 (i); and that a citation may issue and be directed to respondents and each of them citing them to appear in the said United States Circuit Court of Appeals for the Ninth Circuit 40 days from the date of said citation; and that an order be made directing the Clerk of the above entitled Court to prepare the transcript of the record, proceedings and papers, and all of them, upon which

said judgment was made and entered, and duly authenticate the same and send the same [281] to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER,
GEORGE R. ANDERSEN,
HERBERT RESNER.

Copy received November 4, 1942.

H. L. FAULKNER,
Attorney for Alaska Packers Assn., Alaska Salmon Co. and Red Salmon Canning Company.

GROVER C. WINN,
Attorney for Alaska Unemployment Comp. Commission.

[Endorsed]: Filed November 4, 1942. [282]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and complaint of the judgment rendered and entered herein by the District Court for the Territory of Alaska, Division No. 1, at Juneau, on August 8, 1942, and

of the whole thereof, and aver that in the proceedings in said cause manifest error has occurred to the prejudice of these applicants and appellants and each of them of which they make the following:

ASSIGNMENTS OF ERROR

which they assert and intend to rely upon in the United States Circuit Court of Appeals for the Ninth Circuit upon their appeal to said Court.

I.

That Finding of Fact No. 5 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that no labor dispute, within the meaning in the Alaska Unemployment Compensation Law, existed between petitioners and claimants, the Commission and its members, on the one side, and the respondent companies on the other side; and that said alleged labor dispute did not continue and did not remain in active progress as stated by said finding. [283]

II.

That Finding of Fact No. 6 made by the District Court is irrelevant and immaterial in that it makes no difference whatsoever to this proceeding when respondent companies find it necessary to make preparation for the Alaska Salmon Packing season, but the only issue in this case is whether applicants and petitioners are entitled to benefits within the purvue of the Alaska Unemployment Compensation Law in view of the evidence adduced before the Referee and The Commission.

III.

That Finding of Fact No. 7 made by the District Court is not supported by the evidence in that said finding assumes that a labor dispute existed and continued whereas the fact is that no labor dispute existed or continued or was in active progress during the said 1940 Alaska Salmon packing season within the meaning of the Alaska Unemployment Compensation Law. Applicants and appellants take no exception to said finding insofar as it sets forth the dates given by respondent canneries as their deadlines for the execution of collective bargaining agreements. That insofar as said finding No. 7 finds that canning operations could not be undertaken unless agreements were reached before the dates set forth in said finding, said finding is improper in that said matter is immaterial and irrelevant to the rights of applicants and appellants to have unemployment benefits.

IV.

That with respect to Finding No. 8 made by the said District Court the only part of said finding that is proper is as follows: "That no agreement was reached." The balance of said finding is immaterial and irrelevant and is not a proper finding and has no relation whatsoever to the issue involved in this case, namely, the right of applicants and appellants to be awarded unemployment benefits for the 1940 season.

V.

That finding No. 9 made by the District Court is

not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire [284] season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

That Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that the unemployment of applicants and appellants during the 1940 season was not due to a labor dispute existing between applicants and appellants on the one hand and respondent companies on the other; and admitting for the sake of argument that a labor

dispute existed at one time, said labor dispute was not in active progress during the said 1940 season in the plants where applicants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940 and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season.

VII.

That Finding of Fact No. 11 made by the District Court is not supported by the evidence adduced before the Referee and the Commission, but on the contrary the conclusions of law and the decision of the Alaska Unemployment Compensation Commission were not supported by the findings and the evidence and the said decision was not proper and was not in accord with the evidence, and the said findings of the Commission were not sufficient, but on the contrary the Commission should have made findings of fact on matters which the Commission ignored, and which were necessary to a proper determination of the case, as follows:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case? [285]

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemploy-

ment of petitioners "due" to the seasonal nature of their work and the fact that they were never re-employed in 1940, rather than an alleged labor dispute?

3. If there was a dispute, how long did it remain in "Active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940: Was not the Referee correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

VIII.

That Finding of Fact No. 12 made by the District Court is not supported by the evidence and the evidence shows, contrary to said finding, that the Alaska Salmon Company would not have conducted its 1940 Salmon packing operations regardless of whether a collective bargaining agreement had been entered into with the applicant union and its members or not.

IX.

That Finding of Fact No. 13 made by the District Court is not supported by the evidence; that petitioners did make objections to the findings of the Commission according to the provisions of the Alaska Unemployment Compensation Law by appealing the decision of said Commission to the above entitled Court and filing in this Court their petition for re-

view of said decision on January 8, 1941. That what this finding probably intended to state was that petitioners made no objections to and took no appeal from the findings of the Referee who heard the matter originally, and while it is true that petitioners did not appeal from the decision and findings of the Referee, that when respondent companies took an appeal to the Commission, the entire matter before the Referee was reopened before the Commission, and everything which applicants and appellants presented to the Commission on the respondents' appeal was therefore proper and according to law. The findings of the Commission are not conclusive upon appli- [286] cants and appellants because said findings are contrary to and not supported by the evidence and such a decision is appealable and the evidence may be reviewed to determine if it supports the findings, as provided by Section 6 (i) of the Alaska Unemployment Compensation Law.

X.

That Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that applicants and petitioners were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said applicants and appellants were unemployed during the said 1940 season because respondent companies failed and refused to employ applicants and failed and refused to enter into a collective bargaining agreement

with the Union of which applicants were and are members. That said Conclusion of Law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore applicants and appellants were entitled to benefits accordingly.

XI.

That Conclusion of Law No. 2 made by the District Court is not proper and is contrary to law in that the definition therein stated of what constitutes an active labor dispute within the meaning of the Alaska Unemployment Compensation Law is wrong, but that an active labor dispute within the meaning of said law means an actual dispute between employer and employee whereby the relationship of employer and employee is terminated and employees remain away from work because of a dispute with their employer over wages, hours or other conditions or incidents to employment. That the declared purpose of the law requires that benefits be paid rather than denied in this case.

XII.

That Conclusion of Law No. 3 made by the District Court is improper and contrary to law in that the findings and decision of the Alaska Unemployment Commission are improper, not supported by the evidence, contrary to the evidence and contrary to law and thereby said [287] findings and decision should have been set aside and reversed. That claimants

are entitled to benefits for their unemployment during the entire 1940 season and should have been paid said benefits. That specifically applicants and appellants urge the following assignments of error in connection with the findings and decision of the Commission:

1. CERTAIN FINDINGS OF FACT MADE BY THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (employers and Union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our underlining.)

Exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X" Applicants' Exhibit "19", Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at mid-

night May 3, 1940, and that the employers abandoned the Bristol Bay season at that time.)

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as [288] the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the em-

ployers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season if there was to be operation by the San Francisco operators, the finding is proper and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belong anywhere, rests with the employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. P. 333, p. 335-336.) The use of the word "necessity is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned its 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during

1940 irrespective of whether there had been or had not been an agreement with the union. (See Tr. p. 320, stipulation by Mr. Oliver, [289] counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: First, that that was a "labor dispute", and second, that there was an "active" labor dispute at the opening of the season.

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season.

4. That the Union admitted receipt of the Notice of the cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That employers and applicants were aware of this condition.

9. That the dates of operation of the canneries in the districts involved in this controversy as fixed by Regulation No. 10 are as follows:

Karluk: April 5-September 25;
Chignik: April 1-September 10;
Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commence.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10. [290]

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are

no findings to support a conclusion that a "labor dispute" existed.

(2) Petitioners submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse". (See decision of Referee Roden p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19".)

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing can-

not be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there. [291]

Therefore, the conclusion that "an active labor dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, that it continued beyond the dates mentioned for the respec-

tive areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

a. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only [292] offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939

San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Conmpany would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the Government ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsup-

ported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it [293] ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves)

they could end it (thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Compaany would not hove operated in 1940 even had an agreement with the Union been signed. (Tr. p. 326). Therefore, it would follow that the employees of Alaska Packers [294] (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute.

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 con-

tract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their own fault but because of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no labor dispute.

5. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act. [295]

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940 at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as it its declared purpose.

Unemployment Laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualifications *in* included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17). There was no "dispute" or "strike" here [296] which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIII.

That the opinion of the District Court of April 30, 1942 is contrary to law in that the statements, findings and conclusions therein stated are not supported by the evidence and is based upon the erroneous interpretation of the Alaska Unemployment Compensation Law and particularly upon an

erroneous conception of what constitutes a "labor dispute" and what constitutes a labor dispute in "active progress" within the meaning of said law; that the errors in said opinion are substantially the same as those contained in the decision of the Commission and the specific assignments of error with respect to the Commission's findings and decision set forth in assignment of error No. XII are equally applicable to, and are adopted in full in the instant assignment of error.

Wherefore, applicants and appellants pray that the judgment may be reversed.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
HERBERT RESNER

Receipt of a copy of the foregoing is hereby acknowledged this 4th day of November, 1942.

H. L. FAULKNER
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations, Respondents.

GROVER C. WINN
Atty. for Alaska Unemployment Comp. Comm.

[Endorsed]: Filed November 4, 1942. [297]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO APPEAL.

The petitioners and appellants in the above entitled action having on November 4th, 1942, at Juneau, Alaska, served and filed, and on November 6th, 1942, at Ketchikan, Alaska, presented to the court, their assignment of errors and petition for leave to appeal and prayer for reversal to the United States Circuit Court of Appeals for the Ninth Circuit, all within the period of three months from the date of the decree entered herein on August 8th, 1942; and it further appearing to the court that said petitioners and appellants had theretofore, on October 31st, 1942, served and filed their notice of appeal and thereafter filed their $250.00 cost bond with Maryland Casualty Company surety, both whereof were presented to the court at Ketchikan on November 6th, 1942, with said assignment of errors and said petition for allowance of appeal; and that on November 6th, 1942 all of the foregoing were taken under advisement by the court,—

Now, therefore, the law and the premises being fully understood and considered by the court, it is hereby ordered that leave be, and hereby is, granted to said petitioners and appellants to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said judgment of August 8th, 1942 of the District Court for the Territory of Alaska, Division Number 1, at Juneau, as provided by law; and it is further ordered that the Clerk of

the District Court for the Territory of Alaska, Division Number 1, at Juneau, be, and he is hereby, directed and ordered to prepare and certify a transcript of the evidence, exhibits and all records, proceedings, papers and judgment in the above entitled cause, and transmit the same to the Clerk of the [298] United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within forty (40) days from date; and it is further ordered that said cost bond on appeal be, and same hereby is, approved.

Dated: Juneau, Alaska, this 30th day of January, 1943, nunc pro tunc as and for November 6th, 1942.

GEO. F. ALEXANDER,
District Judge.

Copy received January 28.

H. L. FAULKNER.

[Endorsed]: Filed and entered January 30, 1943.

[299]

[Title of District Court and Cause.]

NOTICE ON APPEAL

Notice is hereby given that the above named Petitioners and plaintiffs hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the

final decree entered in this action at Juneau, Alaska, on August 8th, 1942.

Signed: ANDERSEN & RESNER, of
San Francisco, California,
Counsel of Record.
By HOWARD D. STABLER,
Local Counsel of Attorneys
for Appellants.

Copy hereof received at Juneau, Alaska, October 31, 1942.

GROVER C. WINN,
Attorney for Unemployment
Compensation Commission
of Alaska.
H. L. FAULKNER,
Attorney for Alaska Packers
Association, Alaska Salmon
Company, and Red Salmon
Canning Company.

[Endorsed]: Filed October 31, 1942. [300]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents: That we, the above named Petitioners, as principal, and Maryland Casualty Company as surety, are held and firmly bound unto the above named defendants and the Territory of Alaska in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to

them, and for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of November, 1942.

Whereas, the above named Petitioners, as appellants, seek to prosecute their appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above entitled action by the District Court for the Territory of Alaska, Division Number One,—

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all costs and damages that may be adjudged, if they shall fail to make good their appeal, then this obligation to be void; otherwise to remain in full force and virtue.

FRANK L. ARAGON,
and other Applicants,
Members of Alaska Cannery Workers Union Local No. 5 and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants,
By HOWARD D. STABLER,
Their Attorney in fact.

MARYLAND CASUALTY
[Seal] COMPANY, Surety,
By ALLEN SHATTUCK,
Its Agent and Attorney in fact.

[Endorsed]: Filed November 4, 1942. [301]

[Title of District Court and Cause.]

ORDER EXTENDING TERM & TIME FOR APPEAL AND FOR APPEAL AND FOR PRESENTING BILL OF EXCEPTIONS.

On this sixth day of November, 1942, this matter came before the Court at Ketchikan, Alaska, for an order extending the term and time for filing and presenting a bill of exceptions and perfecting appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the within entitled action for additional period of 40 days from and after expiration of the three months from August 8th, 1942, allowed by law therefor.

And it appearing to the Court that attorneys for defendants herein have made and filed objections to the granting of such order, and that the records and files herein are at Juneau, Alaska, and that the Court has insufficient information or recollection thereof to enable him to pass on the merits of said motion intelligently without the records and files herein, and said records and files cannot be secured or made available to the Court for some

time, due to present uncertainties and delays in the mails and other transportation.

And it further appearing that the attorneys for defendants reside in Juneau, Alaska, and that defendants have a resident attorney there, and only has a special attorney here who has had no previous connection with this case, and said attorneys for defendants having requested that plaintiffs' motion be heard on its merits before being passed upon.

And it further appearing that this Court is now engaged in holding a regular jury term of this court at Ketchikan and will not be able to finish here so as to be able to return to Juneau for at least a month hence, and the Court being convinced that the ends of justice require that such extension of time be made. [302]

Now, Therefore, the premises considered, it is hereby ordered that the time for hearing the motion hereinbefore mentioned and referred to, be and the same is hereby extended for 45 days from this date, subject to any and all rights in the premises which the parties or either of them now have, all of which present rights are hereby preserved until plaintiffs' motion can be heard and decided on its merits.

Done in Ketchikan, Alaska, this 6th day of November, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed and entered November 6, 1942.

[303]

[Title of District Court and Cause.]

ORDER FURTHER EXTENDING TERM AND TIME FOR APPEAL AND FOR PRESENTING BILL OF EXCEPTIONS.

On December 19th, 1942, this matter came before the above entitled court at Juneau, Alaska, on petitioners' oral motion for extension of the time specified in the court's order in the within entitled action made at Ketchikan, Alaska, on November 6th, 1942, for an additional forty (40) days for the reasons that the time specified in said order made November 6th, 1942, would soon expire, and the records and files in said action had not yet been returned from Ketchikan. Attorney Howard D. Stabler represented the petitioners; and attorney H. L. Faulkner represented the Defendants and Respondents. And, said attorney for the Defendants and Respondents consenting, it was Ordered that the time for presenting and hearing the matters specified in said order of November 6th, 1942, be, and same was, extended for the additional period of forty (40) days from December 19th, 1942; and provided that within said extended period of time, when said records and files were returned, said matters should be presented and heard at the convenience of respective counsel and the court.

Done at Juneau, Alaska, the day, month and year hereinabove first written.

GEO. F. ALEXANDER
District Judge.

Copy Hereof Received
H. L. FAULKNER
Attorney for Defendant Respondents.

[Endorsed]: Filed and entered December 22, 1942.

[304]

[Title of District Court and Cause.]

STIPULATION FOR HEARING

It is stipulated by and between respective counsel for the parties hereto that the appeal, if allowed, in the above entitled matter, shall be presented to and heard in the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California; and that the title of the court and cause may be omitted by the Clerk of the above court from the transcript of record in the above entitled cause, after the title of the cause has been once printed.

Dated: October 26, 1942.

ANDERSEN & RESNER
By: HERBERT RESNER
(Attorneys for Appellants)

GROVER C. WINN
Attorney for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission.

H. L. FAULKNER
Attorneys for Alaska Packers, Association, Alaska Salmon Company, and Red Salmon Canning Company, corporations.

[Endorsed]: Filed February 13, 1943 [305]

CITATION

United States of America,—ss.

The President of the United States of America to Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission; and Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations, respondents, Greeting:

You Are Hereby Cited and Admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within forty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court

for the Territory of Alaska, Division No. 1, at Juneau, wherein Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5, on behalf of applicants, are appellants, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Geo. F. Alexander United States District Judge for the Territory of Alaska, Division 1, at Juneau, this 13th day of February, A. D. 1943

[Seal] GEO. F. ALEXANDER
United States District Judge.

O.K.
GROVER C. WINN

Copy received Feb. 13-1943
H. L. FAULKNER
Atty for Alaska Packers Assn.
et al [306]

United States of America,—ss.

On this 13th day of February, in the year of our Lord one thousand nine hundred and Forty Three, personally appeared before me, Howard D. Stabler, the subscriber, a citizen of the United States, over 21 years of age, and competent to be a witness in the within matter and makes oath that he delivered

a true copy of the within citation to Grover C. Winn attorney of record for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission; and to H. L. Faulkner, attorney of record for Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company,

HOWARD D. STABLER

Subscribed and sworn to before me at Juneau, Alaska, this 13 day of February, A. D. 1943

[Seal] ROBERT E. COUGHLIN
Clerk of District Court Territory of Alaska, Division #1

[Endorsed]: Filed Feb 13, 1943 [306a]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above entitled Court:

Please prepare as the record on appeal in the above entitled matter the following:

1. Transcript of evidence, all exhibits, and all files, but excluding briefs, of Referee's hearing before the Alaska Unemployment Commission.
2. Decision of Referee dated September 21, 1940.
3. Decision of Alaska Unemployment Commission dated November 18, 1940. [307]
4. Petition for review in the above entitled Court.

5. Summons on petition for review in the above entitled Court.

6. Respondent's answer to petition for review in the above entitled Court.

7. Request to set definite time for hearing of to submit briefs in the above entitled Court.

8. Stipulation submitting cause on briefs in the above entitled Court.

9. Opinion of Honorable George F. Alexander dated April 30, 1942 in the above entitled Court.

10. Findings of Fact and Conclusions of Law in the above entitled Court.

11. Judgment and Decree in the above entitled Court.

12. Petition for leave to appeal in the above entitled Court.

13. Assignment of Errors in the above entitled Court.

14. Order granting leave to appeal in the above entitled Court.

15. Notice of appeal; cost bond on appeal.

16. Order of November 6, 1942 and December 19, 1942, extending time to perfect appeal etc.

17. Stipulation for hearing to be had at San Francisco in the United States Circuit Court of Appeals for the Ninth Circuit.

18. Citation to respondents in the above entitled Court. Dated: February 13, 1943.

19. This Praecipe.

ANDERSEN & RESNER
HERBERT RESNER
Attorneys for applicants and appellants.

OK Copy received.

GROVER C. WINN

Copy received Feb. 13-1943

H. L. FAULKNER
Atty for Alaska Packers' Assn et al [308]

The United States Circuit Court of Appeals
for the Ninth Circuit

No. .....

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and

ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL

The Court having read and considered the affidavit of Herbert Resner filed herein, and Good Cause Appearing to the Court Therefor,

It Is Hereby Ordered that Appellants' time to file the record on appeal herein is extended to and including May 15, 1943.

Done in Chambers This 16th day of April, 1943.

CURTIS D. WILBUR
Senior Judge of the Circuit Court of Appeals for the Ninth Circuit.

Copy received April 24, 1943.

H. L. FAULKNER,
Atty for Alaska Packers Association et al.

[Endorsed]: Filed April 24, 1943. [309]

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF HERBERT RESNER

State of California
City and County of San Francisco—ss.

Herbert Resner, being first duly sworn, deposes and says: That he is of counsel for appellants in the above entitled matter; that an appeal is being taken by appellants to the above entitled Court from an Order from the District Court for the Territory of Alaska, Division Number One; that the record has not yet been completed and made ready for filing by the Clerk of said District Court; that affiant is in receipt of a telegram from counsel associated with him at Juneau, Alaska, as follows:

"Juneau, Alaska, April 14, 1943.

"Anderson and Resner Attys

"544 Market St. San Francisco

"It will be another ten days or more before our

Clerk will have the Aragon record ready to forward to you for filing in Circuit Court and I think you should arrange enlargement of time in Appellate Court for filing same Stop They are short handed here and are delayed getting it out.

"HOWARD D. STABLER."

Wherefore, affiant prays that the time for appellants to file the record herein be extended to and including May 15, 1943.

HERBERT RESNER

Subscribed and sworn to before me this 15th day of April, 1943.

[Seal] ALICE C. MORSE

Notary Public, in and for the City and County of San Francisco, State of California. [310]

In the District Court for the District of Alaska
Division No. 1, at Juneau

United States of America,
District of Alaska,
Division No. 1—ss.

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD

I, Robert E. Coughlin, Clerk of the District Court for the Territory of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 310 pages of typewritten matter, numbered from 1 to 310, both inclusive, constitute a full, true, and com-

plete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the appellant on file herein and made a part hereof, in cause No. 4620-A wherein Frank Aragon et al are appellants and Unemployment Compensation Commission of Alaska, et al are the appellees and Alaska Packers Association and Alaska Salmon Co. and Red Salmon Company, corporations, are respondents as the same appears of record and on file in my office, and that said record is by virtue of an appeal and Citation issued thereon in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to One hundred fifty eight & 75/100 (158.75) Dollars has been paid to be my counsel for Appellants.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled Court this 3rd day of May, 1943.

[Seal] ROBERT E. COUGHLIN
Clerk
By J. W. LEIVERS
Deputy

[Endorsed]: No. 10425. United States Circuit Court of Appeals for the Ninth Circuit. Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5 on behalf of applicants, Appellants, vs. Unemployment Compensation Commission of the Territory of Alaska, Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission, and Alaska Packers Association, a corporation, Alaska Salmon Company, a corporation, and Red Salmon Canning Company, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, First Division.

Filed May 7, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10425

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

Appellants hereby adopt as their points on appeal each and every one of the Assignments of Error appearing in the Transcript of the record on file herein, which Assignments of Error were made in the Court below.

Dated: San Francisco, California, May 10, 1943.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
HERBERT RESNER
HOWARD STABLER
Attorneys for Appellants.

Receipt of a copy of the within Statement of Points on which Appellants Intend to Rely on Appeal is hereby admitted this 12 day of May, 1943.

PILLSBURY, MADISON & SUTRO
Attorneys for Respondents, Alaska Packers Association

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

State of California
City and County of San Francisco—ss.

Ann Ferguson, being first duly sworn, deposes and says:

That she is now and at all times herein mentioned was a citizen of the United States, residing at 3415 Pierce Street in the City and County of San Francisco, State of California, where the mailing herein referred to took place; that she is over the age of twenty-one years, not a party to the

within entitled cause, or interested in the event thereof; that she has hertofore, to-wit: On the 12th day of May, 1943, made this service for Andersen & Resner, who are the attorneys for the Appellants in this action, and who have their offices at 544 Market Street, San Francisco, California; that Faulkner & Banfield are the attorneys for the Appellees, Alaska Packers Association, Alaska Salmon Company and Red Salmon Company, and the offices of said attorneys for said Appellees were at all times herein mentioned and still are located at Juneau, Alaska; that Grover C. Winn is the attorney for the Appellee, Unemployment Compensation Commission of the Territory of Alaska, and the offices of said attorney for said Appellee were at all times herein mentioned and still are located at Juneau, Alaska; that Earl, Hall & Gerdes are the attorneys for the Appellee, Alaska Salmon Company, and the offices of said attorneys for said Appellee were at all times herein mentioned and still are located at 215 Market Street, San Francisco, California; that at all times herein mentioned there was and still is regular communication by United States mail between the said City and County of San Francisco and said Juneau, Alaska, and between points in the City and County of San Francisco; that on the 12th day of May, 1943, deponent served the within Statement of Points On Which Appellants Intend To Rely On Appeal for the above named Andersen & Resner, attorneys for said Appellants, by mail, in the following manner, to-wit: deponent inclosed said Statement of Points On

Which Appellants Intend To Rely On Appeal in envelopes addressed as follows:

Faulkner & Banfield
Attorneys at Law
Juneau, Alaska

Grover C. Winn, Esq.
Attorney at Law
Juneau, Alaska

Earl, Hall & Gerdes
Attorneys at Law
215 Market Street
San Francisco, California

sealed the same, and deposited them, on the last named day, so sealed and addressed, with the said enclosure, and with the postage thereon fully prepaid, in the United States Post Office, in the City and County of San Francisco, State of California.

ANN FERGUSON

Subscribed and sworn to before me this 12th day of May, 1943.

[Seal] ALICE C. MORSE

Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 13, 1943. Paul P. O'Brien, Clerk.